

Exhibit D

1 UNITED STATES DISTRICT COURT
 2 CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
 3 HONORABLE A. HOWARD MATZ, U.S. DISTRICT JUDGE

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5 UNITED STATES OF AMERICA,)

6 Plaintiff,)

7 vs.)

8 (2) ANGELA MARIA GOMEZ AGUILAR,)
 9 (3) LINDSEY MANUFACTURING COMPANY,)
 10 (4) KEITH E. LINDSEY, and)
 11 (5) STEVE K. LEE,)

Defendants.)

Case No.

CR 10-1031-AHM

CERTIFIED COPY

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 13 *REPORTER'S TRANSCRIPT OF*

14 *JURY TRIAL - DAY 4*

15 *VOLUME 1 (Pages 726 - 779)*

16 *THURSDAY, APRIL 7, 2011*

17 *8:00 A.M.*

18 *LOS ANGELES, CALIFORNIA*

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UNITED STATES DISTRICT COURT

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1 LOS ANGELES, CALIFORNIA; THURSDAY, APRIL 7, 2011

2 8:00 A.M.

3 - - -

4 THE COURT: Good morning. Welcome. Please be
5 seated.

6 We're here on the Aguilar case. The lawyers are
7 present and so are the individual defendants. We don't have
8 to call the case at the moment.

9 I've instructed my law clerk to tell the jurors to go
10 get a cup of coffee, because it's going to take a little bit
11 of time to go through the matters that are raised by the
12 materials that I was handed this morning, which I have
13 finished reading, including Exhibits 778 and 779.

14 I know the defendants have objections to the
15 government's proffer, and it may be appropriate to hear that,
16 but it may not even be necessary. So, would you go to the
17 lectern please, Ms. Mrazek.

18 You prepared the offer of proof, I take it?

19 MS. MRAZEK: I did, your Honor.

20 THE COURT: Okay. So, I want to ask you some
21 questions about it. It's possible -- I'll just say this
22 preliminarily, that some of the questions about this
23 witness -- and he's excluded from the courtroom, right? He's
24 not in the courtroom?

25 MS. MRAZEK: Yes, your Honor.

1 THE COURT: All right. Thank you. Maybe some of
2 this came up yesterday, but I couldn't follow where you were
3 going or what he was talking about yesterday.

4 And my starting concern about this offer of proof is
5 that no juror can possibly follow it in the context of this
6 case either. But it's at least in writing, so I can try to
7 figure out what you think is admissible.

8 So, here are some of the questions. You say on
9 Page 1 -- now, I recall that this witness identified
10 Moreno --

11 MS. MRAZEK: Yes, your Honor.

12 THE COURT: -- by his picture.

13 Have you elicited any testimony from this witness
14 that he dealt directly with Moreno?

15 MS. MRAZEK: Yes, your Honor.

16 THE COURT: What did he say?

17 MS. MRAZEK: He said that he had met Mr. Moreno in
18 the late Nineties, and that he had had interactions with him,
19 but we had not gotten into the individual conversations
20 concerning these contracts.

21 THE COURT: Okay. Are you going to be eliciting from
22 this information sworn testimony that he paid a bribe to
23 Moreno?

24 MS. MRAZEK: Yes, your Honor.

25 The way that the bribe was paid was not directly, so

1 he'll testify that he spoke to Mr. Moreno's right-hand man, a
2 person who he identified yesterday as Carlos Rovira. And
3 Mr. Rovira explained that the way that the bribes would be
4 passed, was that there were going to be false invoices from
5 two companies Obras Martimas and Sorvill International. And
6 then, that money was going to be passed along to multiple
7 government officials at CFE, including Nester Moreno.

8 THE COURT: Okay. So, that's what he would say
9 Rovira told him.

10 MS. MRAZEK: Yes, your Honor. He --

11 THE COURT: It sounds like it's hearsay,
12 intrinsically. And then, what will he say about what he
13 did --

14 MS. MRAZEK: Your Honor --

15 THE COURT: -- this witness, that has something to do
16 with any of the defendants in this case -- or perhaps their
17 unindicted co-conspirators, Moreno and Hernandez, that has
18 something to do with this case?

19 MS. MRAZEK: Yes, your Honor.

20 THE COURT: Where is the link to this case?

21 MS. MRAZEK: Your Honor, the link to this case, with
22 regard to this testimony, is that Mr. Basurto will explain
23 what Sorvill International was.

24 THE COURT: What will he say?

25 MS. MRAZEK: He will say that Sorvill International

1 was a company that was used to pass bribes to Nester Moreno.
2 He will say that there --

3 THE COURT: Is there any evidence in this case that
4 Sorvill International was used to pay bribes to CFE? Bribes
5 that are linked in some way to the Lindsey defendants?

6 MS. MRAZEK: Your Honor, there are these wire
7 transfers that occur at Lindsey Manufacturing to Grupo
8 International in 2002, two wires of approximately \$174,000
9 each. After that money is transferred into Grupo
10 International's Global Financial brokerage account, Angela
11 Aguilar signs a wire transfer authorization for \$145,000 to
12 be sent to Sorvill's bank account overseas. The same bank
13 account where the ABB money that was bribes also went.

14 Attached to this wire transfer authorization is a
15 Sorvill invoice that Ms. Aguilar references in her wire
16 transfer authorization. This Sorvill invoice, the government
17 will argue, appears to be false on its face, and the United
18 States --

19 THE COURT: In what respects?

20 MS. MRAZEK: The invoice purports --

21 THE COURT: Do you have the invoice as one of the
22 Government's Exhibits?

23 MS. MRAZEK: It is, your Honor.

24 THE COURT: Could you tell me which number it is,
25 please?

1 MS. MRAZEK: Yes, your Honor.

2 THE COURT: And while you're searching for that
3 number, I think it's correct to say that in previous
4 proceedings it was established that there is no money,
5 whatsoever -- no evidence of any money whatsoever being sent
6 from any Lindsey defendant to Sorvill, correct?

7 MS. MRAZEK: Not directly, your Honor.

8 THE COURT: So, even if this money from Lindsey to
9 Grupo, which was linked to near contemporaneous or --

10 MS. MRAZEK: Yes, your Honor.

11 THE COURT: -- contemporaneous payments to Sorvill,
12 even if that's attributed to LMC, what's the link?

13 Do you think that the false invoices that were
14 used -- invoices on Sorvill documents for the ABB trade were
15 identical to the invoices that Sorvill sent to Grupo?

16 MS. MRAZEK: Very similar, your Honor, not identical.

17 THE COURT: And then what? What follows from that?

18 MS. MRAZEK: Your Honor, that account was used as
19 bribe proceeds for Nester Moreno and other CFE officials.

20 THE COURT: Which account?

21 MS. MRAZEK: This Dresdner bank account that both
22 Sorvill invoices -- both the one that Angela Aguilar attached
23 to a wire transfer authorization, and the ones that Basurto
24 participated in making and presenting to network
25 management -- both of those invoices provide payment to the

1 same account.

2 THE COURT: To --

3 MS. MRAZEK: To this Dresdner bank account in the
4 name of Sorvill, over which Ms. Aguilar is the signatory.

5 THE COURT: And then what evidence do you have that
6 money was transferred out of this Dresdner account to a
7 Mexican public official?

8 MS. MRAZEK: Your Honor, out of that account there's
9 a transfer to pay for Nester Moreno's son's military
10 education at St. John's Military Academy in Wisconsin.

11 THE COURT: And when was that done?

12 MS. MRAZEK: Your Honor, 2004.

13 THE COURT: And what's the connection to that to this
14 case?

15 MS. MRAZEK: Your Honor, the bribery in this case is
16 alleged to have occurred from 2002 to 2008.

17 THE COURT: But that transaction, about some
18 education at a school in Wisconsin is not alleged in this
19 case, right?

20 MS. MRAZEK: That particular overt act is not alleged
21 in the First Superseding Indictment.

22 THE COURT: And were you planning to try to prove it?

23 MS. MRAZEK: Your Honor, we do have the exhibits from
24 St. John's Military Academy on the exhibit list, as well as
25 the information from Dresdner Bank, which the defendants have

1 said is both authentic and falls under 3505 in terms of the
2 foreign business records of regularly conducted activity
3 business record exception.

4 THE COURT: Where is this invoice that I asked you to
5 find? What's the number, please?

6 MS. MRAZEK: The invoice is in Government's Exhibit
7 434.

8 THE COURT: Okay. 434, in the set that I've been
9 presented, is a several-page document. Can you tell me what
10 the Bates number is that --

11 MS. MRAZEK: It's the last page of the exhibit, your
12 Honor. The Bates number is SEC ABB LTD 5368.

13 THE COURT: Ms. Levine, would you be seated, please.

14 MS. LEVINE: Oh, I'm sorry, your Honor. I wasn't
15 standing to talk. I was just not paying attention, your
16 Honor.

17 THE COURT: Okay. What's the invoice number 5368?

18 MS. MRAZEK: 5368, your Honor. It's the last page of
19 the exhibit.

20 THE COURT: Okay. So, I'm looking at that document.
21 And you're saying that that document, which appears to be an
22 invoice for 145,000, is linked to something that Lindsey did;
23 and where is the document showing a Lindsey transfer to
24 Grupo?

25 MS. MRAZEK: Your Honor, there are two documents with

1 those transfers, and there's actually multiple documents that
2 support them. Government's Exhibits 480 and 481 are both
3 incoming wire details for Lindsey Manufacturing into this
4 account.

5 THE COURT: Into which account? The Sorvill account?
6 No --

7 MS. MRAZEK: No.

8 THE COURT: -- the Grupo account?

9 MS. MRAZEK: Into the Grupo account.

10 THE COURT: And what are the dates?

11 MS. MRAZEK: The dates are August 1st, 2002, and
12 August 5th, 2002.

13 THE COURT: Okay. 21 days and 17 days apart from
14 this invoice.

15 MS. MRAZEK: Yes, your Honor.

16 THE COURT: So, your theory will be that all of this
17 is relevant and probative to show that the means in which
18 this witness would say, through convoluted testimony as best
19 as I can understand it -- this witness meaning Basurto -- a
20 bribe involving ABB was paid at a different time by different
21 bribers, has some similarity, in the sense that there was an
22 invoice involved in that case from Sorvill to -- and in that
23 respect -- and I take it only that respect, there's a
24 similarity to this case because of this invoice from Sorvill
25 to Grupo. Did I get it straight?

1 MS. MRAZEK: Your Honor, yes. There's a few
2 additional details that I would add.

3 THE COURT: Tell me what they are.

4 MS. MRAZEK: One of those details is that Mr. Basurto
5 would testify that the Sorvill invoices that he helped create
6 were false. And we would argue that this invoice --

7 THE COURT: Did he use a computer to create invoices
8 on Sorvill that Sorvill had nothing to do with creating?

9 MS. MRAZEK: Your Honor, it was a group effort by the
10 conspirators. The information about what the invoice was
11 purportedly for, was formulated with the general manager of
12 ABB. The --

13 THE COURT: Yes. But what is Basurto going to say
14 about Enrique Aguilar working in some manner to create a
15 Sorvill International phony invoice for the ABB transaction?

16 What's he going to say about Enrique Aguilar?

17 MS. MRAZEK: Your Honor, Mr. Basurto will testify
18 that Mr. Aguilar is the owner of Sorvill, and that his
19 signature appears on the Sorvill -- one of the Sorvill
20 invoices the United States intends to introduce today.

21 He will further testify --

22 THE COURT: One of the Sorvill invoices that were
23 presented to whom?

24 MS. MRAZEK: Were presented to ABB Network
25 Management.

1 He will further testify that he had conversations
2 with Mr. Carlos Rovira, the right-hand man of Nester Moreno,
3 who would explain that Nester -- that Sorvill International
4 and Enrique Aguilar were one of the companies that Nester
5 Moreno had chosen to receive bribe payments.

6 THE COURT: And why is that not hearsay?

7 MS. MRAZEK: Because it's a co-conspirator statement,
8 your Honor.

9 THE COURT: By whom?

10 MS. MRAZEK: It's a co-conspirator statement by
11 Mr. Rovira, who was engaged in a conspiracy with Mr. Basurto,
12 and the general manager of ABB, Mr. Nester Moreno, and --

13 THE COURT: I'm talking about in this case. That may
14 have been admissible in a case against Basurto.

15 MS. MRAZEK: Your Honor --

16 THE COURT: Why? You haven't even identified Carlos
17 Rovira as a co-conspirator in this case. Now, tell me why
18 it's not hearsay in this case?

19 MS. MRAZEK: Your Honor, the co-conspirator exception
20 does not have to be the same conspiracy as the conspiracy
21 charged in the Indictment. As long as it is a criminal
22 statement and the conspiracy, enough foundation is laid for,
23 that it becomes an admissible statement.

24 THE COURT: You seem to be asking me to make a ruling
25 akin to a ruling under 104 or 106, that a statement made

1 years ago by Carlos Rovira -- who was not a defendant or a
2 co-conspirator in this case -- to Fernando Basurto -- who is
3 not a defendant or a co-conspirator in this case -- is
4 admissible in this case as a co-conspirator exception?

5 MS. MRAZEK: Yes, your Honor.

6 THE COURT: So, the logic of that is, any statement
7 made in furtherance of conspiracy --

8 MS. MRAZEK: Your Honor, if I may --

9 THE COURT: -- that members of the Aryan Brotherhood
10 engaged in, is admissible in a conspiracy that members of the
11 Mexican Mafia engaged in, because both involve killing prison
12 inmates who were white.

13 MS. MRAZEK: Your Honor, if I may?

14 THE COURT: Is -- is there any difference in the
15 analogy that I drew and what you're trying to do here?

16 MS. MRAZEK: Yes, your Honor.

17 THE COURT: Tell me what it is, please.

18 MS. MRAZEK: The difference there is relevant. Here,
19 the same account with commingled funds from two different
20 sources were used to bribe CFE officials.

21 The United States has charged a money laundering
22 conspiracy and a substantive count of money laundering, and
23 proving that the money that came into this account was from
24 illegal proceeds is -- is part of one of the elements of the
25 United States' burden of proof.

1 THE COURT: Without even needing or inviting any
2 objection by any defendant to that aspect of this proffer,
3 I'm ruling it inadmissible.

4 Your explanation is totally unpersuasive and lacking
5 in merit. You're not going to be permitted, regardless of
6 what I decide on this overall story that you're telling me
7 here, to ask this witness, Basurto, about questions he had
8 with Rovira -- or whatever the guy's name is -- that will
9 then permit you to point to, or your colleagues, as evidence
10 of the conspiracy in this case or the bribe in this case. It
11 is preposterous. I don't even invite or need further
12 argument on that.

13 So, my question on Page 1, did you present the
14 SITRACEN and Evergreen contracts, which have nothing to do
15 with this case, except for what you perceive to be a similar
16 way of bribing Nester Moreno, are those in evidence?

17 MS. MRAZEK: Your Honor, Mr. Basurto testified as to
18 those two contracts yesterday.

19 THE COURT: Are they in evidence?

20 MS. MRAZEK: No, your Honor. The physical --

21 THE COURT: Were you planning to offer them in
22 evidence?

23 MS. MRAZEK: No, your Honor. The only --

24 THE COURT: So, you want to be able to establish that
25 the bribes in -- the alleged bribes in this case were really

1 bribes -- even though there's nothing on their face that
2 would signify to a reader that they look like bribes, at
3 least some of the documents -- because that was true in a
4 different case, and it was true in a different case -- that
5 is to say there were documents that on their face looked
6 kosher, but weren't, and a jury can take that into account
7 because of what Basurto says, without comparing the
8 documents?

9 MS. MRAZEK: Your Honor, we would be happy to
10 introduce the actual contracts, but we were trying to limit
11 the amount of evidence concerning ABB.

12 THE COURT: So, it all comes down to using Basurto's
13 story about what happened, to the extent it's comprehensible,
14 in the ABB case, as a basis to prove what happened in this
15 case?

16 MS. MRAZEK: Your Honor, the defendants' arguments
17 about what happened at CFE imply that bribery was impossible
18 under the circumstances. That given how these contracts were
19 obtained, where they were obtained, who obtained them, what
20 they looked like, that there could not have been bribery.
21 That the -- these products were superior products. At times
22 they were the only product. And the United States would like
23 to put on evidence to rebut that defense.

24 THE COURT: Let's see if the defense has made, as a
25 defense, as opposed to a challenge, as to some of the

1 witnesses you put on.

2 This is so confusing, so remote, parts of it so
3 flatly inadmissible, that so far -- in my effort with an open
4 mind, honestly, to see where you're going with this, I'm sure
5 glad I asked you to try to explain it -- I see nothing that
6 passes muster as being admissible evidence on any of the
7 bases for 404(b).

8 Why don't you have a representative of CFE come in
9 and say, we can't tell whether they're real bribes that are
10 going on necessarily just because documents look kosher?

11 MS. MRAZEK: Your Honor, under Mexican law, Mexican
12 officials are not allowed to come and testify in U.S. court.
13 So, in order to do that, we would have to do a Rule 15
14 deposition, and frankly, there was no time.

15 THE COURT: Ah, that seems to have been what's
16 plaguing the government team throughout. I've had some
17 silent views about that for quite awhile. There may not have
18 been any time, but that doesn't mean there wasn't any
19 opportunity.

20 So, you want to get around the pressures of time and
21 the rules of evidence by establishing a response to the
22 defendants' position that nothing looked unusual, or phony,
23 or bribe-laden, through Basurto, who will say that he was
24 told the same thing, or managed to get away with the same
25 thing, on two utterly different contracts. It won't work.

1 MS. MRAZEK: Your Honor --

2 THE COURT: It won't work.

3 Now, let's go to Page 2. Basurto's expected to
4 testify that Enrique Aguilar is the owner of Sorvill.

5 What's the foundation for that?

6 MS. MRAZEK: Your Honor, he received an invoice from
7 Sorvill as part of the conspiracy, that said that it was from
8 Enrique Aguilar. It was signed from Enrique Aguilar. And he
9 understood from the other conspirators that it was from
10 Enrique Aguilar.

11 THE COURT: From the other conspirators in his case?

12 MS. MRAZEK: Yes, your Honor.

13 THE COURT: Okay. I could see no barrier to your
14 presenting a witness with a check that comes from a company
15 that appears to have involved Aguilar, and to establish who
16 signed the check or whose name is on the signature line of
17 the check, that's admissible.

18 You got the same problem, once again, with trying to
19 prove ownership through Basurto. If Basurto came in here and
20 said, over a cup of coffee Aguilar told me that he owned
21 Sorvill, and that he used Sorvill as a vehicle -- or as a
22 vessel, I should say, through which funds were laundered,
23 that would be admissible.

24 To testify that Aguilar is the owner and prove that,
25 which is itself an indirect way of proving this conspiracy,

1 at best, through the testimony of Basurto, that lacks
2 foundation and it lacks an evidentiary basis. So, you can't
3 do that.

4 MS. MRAZEK: Your Honor --

5 THE COURT: And from '98 through 2004, was a company
6 used to pass bribes? What's the foundation for Basurto
7 testifying to that?

8 MS. MRAZEK: Your Honor, he was involved with two of
9 those bribe payments in 2004. He also --

10 THE COURT: So, what was he involved in in 1998?

11 MS. MRAZEK: Your Honor, he was passing bribes --

12 THE COURT: That involved Sorvill?

13 MS. MRAZEK: Yes, your Honor.

14 What Mr. Basurto would testify to is that he was
15 passing bribes to another government official at CFE. He
16 called --

17 THE COURT: That official being who?

18 MS. MRAZEK: His name was Jorge Hernandez. A
19 different CFE official than involved in this case, which is
20 why I've not discussed that government official in
21 Mr. Basurto's testimony so far.

22 He would testify that he called and -- he and his
23 father called and asked for a summary of the commissions that
24 they had been paid, because the bribe payments were a part of
25 the commissions.

1 When they received a breakdown of the commissions
2 that they had received, they received not only their own
3 commissions --

4 THE COURT: Who is the *they*? I'm totally lost.

5 MS. MRAZEK: I'm sorry, your Honor.

6 THE COURT: Who are you referring to now?

7 MS. MRAZEK: The Basurtos, father and son.

8 Mr. Fernando G. Basurto and Fernando Maya Basurto --

9 THE COURT: Uh-huh.

10 MS. MRAZEK: -- received a spreadsheet from that work
11 management. This is one of the Government's Exhibits.

12 THE COURT: Is it 778 or 779? I have them both up
13 here.

14 MS. MRAZEK: Yes, your Honor.

15 THE COURT: You told me to look at them and I have.

16 MS. MRAZEK: Yes. It's Government's Exhibit 779.

17 THE COURT: Okay.

18 MS. MRAZEK: Mr. Basurto would testify that he
19 received a copy of this spreadsheet from ABB Network
20 Management.

21 He would further testify that he -- that he and his
22 father were surprised by this second column of commissions --
23 the commissions to Sorvill -- or the payments to Sorvill. He
24 would further testify that he then -- because later he was
25 asked to pass bribe payments to Sorvill --

1 THE COURT: He was asked to pass bribe payments that
2 were being given to which bribee?

3 MS. MRAZEK: To Carlos Rovira, Nester Moreno, and
4 others at CFE.

5 THE COURT: Which others?

6 MS. MRAZEK: He would testify that he was told by
7 Carlos Rovira that the money would be given to Arturo Nova,
8 Arturo Hernandez, Ricardo Sosa, Gustavo Salvador Torres and
9 Francisco Holguin, if asked, your Honor.

10 THE COURT: Don't you think it will be asked by the
11 defendants?

12 MS. MRAZEK: Your Honor, if the defendants would like
13 to ask those questions, they're free to.

14 THE COURT: Oh, they're going to ask. Did you ever
15 deal with Angela Aguilar?

16 Did you ever deal with Keith Lindsey?

17 Did you ever deal with Steve Lee?

18 MS. MRAZEK: Yes, your Honor, those questions are all
19 appropriate for this witness.

20 THE COURT: So, what we're off and running on,
21 disproving another conspiracy that's not this conspiracy,
22 that wasn't alleged, that is utterly confusing. So, the link
23 to this case that you see in this document that has an ABB
24 Bates number, and has been marked as Exhibit 779 in this
25 case, is that there is some entries on Sorvill, right?

1 MS. MRAZEK: Yes, your Honor.

2 THE COURT: And that proves what?

3 MS. MRAZEK: Your Honor, this goes to rebut the
4 government -- the defense's argument that there needs to be a
5 close-in-time and nearly one-to-one link between payments
6 made for the purpose of bribery and contracts received.

7 With the ABB and Evergreen contracts, it was two
8 contracts. And yet the -- both actual bribe payments made
9 and those that were planned, occurred over a series of time,
10 and occurred after those contracts had actually been
11 received.

12 THE COURT: Well, there must be 15 entries on
13 Exhibit 779, which was generated -- or at least obtained and
14 maybe used in this other case that you were the responsible
15 prosecutor for, right?

16 MS. MRAZEK: I am, your Honor.

17 THE COURT: And the latest of them -- the first
18 begins in '97, and the latest ends in August 25th of '01,
19 before this conspiracy even was hatched, according to the
20 Indictment.

21 Did the government attempt to bring in -- to your
22 knowledge, Ms. Mrazek, did Carlos Rovira deal with Enrique
23 Aguilar directly?

24 MS. MRAZEK: Yes, your Honor.

25 THE COURT: Is he a witness in this case?

1 MS. MRAZEK: Carlos Rovira? No. Carlos Rovira is a
2 former CFE official. He's no longer with CFE.

3 THE COURT: Fine. But why isn't he a witness in this
4 case?

5 MS. MRAZEK: Your Honor, he's in Mexico. He's,
6 frankly, a subject in the other investigation -- a target,
7 really -- and the United States doesn't have any control over
8 him.

9 THE COURT: Did you attempt to take his deposition?

10 MS. MRAZEK: Your Honor, no. We did not attempt to
11 take Carlos Rovira's deposition, nor any of the other
12 conspirators in Mexico.

13 THE COURT: Okay. And what does Exhibit 778 show me?
14 You asked me to look at that one, too.

15 MS. MRAZEK: Your Honor, Government's Exhibit 778 is
16 the breakdown of bribe payments made during the Evergreen
17 contract.

18 What Mr. Basurto would testify to, is that the column
19 labeled 3WT, for approximately \$3 million, was money that was
20 supposed to go to Carlos Rovira and Nester Moreno and be
21 passed on to others, as well at CFE, that was to be paid
22 using Sorvill invoices and invoices from another company.

23 THE COURT: Okay.

24 MS. MRAZEK: This demonstrates too, that the plan for
25 passing these bribe payments occurred over a long period of

1 time, and was not simply a one-time bribe payment to obtain a
2 contract, but instead was a series of payments.

3 THE COURT: And that's relevant to prove what in this
4 case?

5 MS. MRAZEK: Your Honor, it's relevant to rebut the
6 defense's defense that there needs to be a strict correlation
7 between the time that bribes were paid and the time that
8 those bribes are passed on.

9 THE COURT: If that's their contention, perhaps
10 you're right that it is. This is an absolutely remote, at
11 best, way of proving that in the real world of bribery that
12 may go on in Mexico, it doesn't have to be that the bribe is
13 hatched, and completed, and the documents reflected within a
14 day, or a week, or a year, it could be a delay.

15 This is a different case, Ms. Mrazek. These are
16 different bribers, different bribees, different contracts,
17 different time periods. If this is the only way that the
18 government can address that part of the defendants' defense,
19 then maybe you and your colleagues should evaluate where you
20 are in this case, because that's not a way you're going to be
21 allowed to use, and that isn't even a way that makes any
22 fundamental sense.

23 You have to understand that the defendants moved to
24 limit the government's proof on this -- and I reserved a
25 ruling -- and then all of a sudden Basurto is on the stand,

1 and I was absolutely puzzled, at best, what was going on. I
2 tried to give you guidance yesterday about how you could get
3 passed simple things.

4 This explanation would permit such a massive level of
5 confusion, delay, likely prejudice, evidentiary objections
6 that almost certainly would be valid and probably sustained.
7 Under 403 itself there's a very palpable, immediate basis to
8 exclude it. Under 404(b), I find the same thing is true.

9 This isn't about this case. Congratulations to you
10 for securing a conviction for Mr. Basurto, but you're not
11 going to prove your case against his co-conspirators in this
12 case. And you're certainly not going to prove the case
13 against the people alleged to be co-conspirators and
14 defendants in this case, through that case. That's not the
15 way it's done. So --

16 MS. MRAZEK: Your Honor --

17 THE COURT: -- proceed with Basurto accordingly.

18 There is a limited amount of information that he has
19 a percipient basis has to testify to. He could not testify
20 in this case to what you say on Page 3, "Basurto is expected
21 to testify about the criminal conversations he had with
22 Carlos Rovira," who once again is not a defendant in this
23 case, not a co-conspirator in this case, not a witness in
24 this case, not even a name I ever heard of until yesterday.
25 And I've been working, along with the lawyers, quite hard on

1 this case for quite sometime.

2 You want him to testify in this case that he had
3 conversations with Rovira, which is his basis of his
4 knowledge, that Arturo Hernandez -- who is not a defendant in
5 this case -- was also receiving funds. That's hearsay.

6 And then you want to get into plastic surgery and
7 hair plugs? I mean --

8 MS. MRAZEK: Yes, your Honor.

9 THE COURT: -- I thought you were joking when you got
10 to that in this -- I -- I don't mean to minimize. You're
11 doing your best you can with what little you have,
12 Ms. Mrazek. But, for Basurto to explain Nester Moreno's
13 obvious physical transformation during their acquaintance due
14 to plastic surgery and hair plugs...

15 *Footnote 3, the government will later introduce*
16 *evidence that Angela Aguilar knew Nester Moreno over many*
17 *years, and argue that these obvious expensive changes --*
18 *okay. So, to put -- would demonstrate to her -- this*
19 *defendant in this case, Angela Aguilar -- that Nester Moreno*
20 *had means incommensurate to the civil service position that*
21 *she knew he held. This evidence is probative of her*
22 *knowledge.*

23 Honestly, you've got to be kidding. You're going to
24 introduce evidence as to how much the hair plugs cost, and
25 what the going rate for hair plugs is in Mexico, and whether

1 a civil servant could afford it, and therefore have hair
2 plugs without triggering a suspicion of bribe payments? Is
3 that how you're going to prove that?

4 MS. MRAZEK: Your Honor, Mr. Basurto would testify
5 that the plastic surgery and the hair plugs occurred in the
6 United States.

7 THE COURT: Are you going to prove how much they
8 cost?

9 MS. MRAZEK: Your Honor, the government would be
10 happy to.

11 THE COURT: Yeah? What would this proof be?

12 MS. MRAZEK: We're not planning on introducing this
13 evidence, your Honor, but we have evidence of the payments
14 for Nester Moreno's hair plugs.

15 THE COURT: Okay. So, you have to -- in order to get
16 into this as you're explaining you have a right to do in
17 Footnote 3, you've got to prove knowledge by Angela Aguilar
18 that Nester Moreno was a recipient of bribes in this case,
19 because he couldn't afford to have -- to pay for the hair
20 plugs he purchased or had done -- I don't even know what they
21 are to tell you the truth -- in the United States. Right?

22 So then, you're going to prove what his civil service
23 salary was?

24 MS. MRAZEK: Your Honor, we could seek to prove that.
25 We have information --

1 THE COURT: You're going to prove what his bank
2 accounts consisted of?

3 MS. MRAZEK: Your Honor, we don't have access to all
4 of Nester Moreno's bank accounts.

5 THE COURT: Suppose he had a rich uncle who wanted
6 him to be the handsomest man on the block and paid for it. I
7 mean, I don't want to belabor this.

8 If that is the source of knowledge that you have to
9 prove the necessary element of knowledge that Angela Aguilar
10 was laundering money --

11 MS. MRAZEK: Your Honor --

12 THE COURT: -- then I think that should tell you
13 something, too.

14 I'm not going to permit you to elicit testimony from
15 Fernando -- from whatever Basurto's name is -- Fernando, I
16 think is his name, or from anybody else. You don't say
17 who -- oh, yes. Basurto. Basurto is going to testify about
18 conversations with Rovira, and you're going to link it up
19 with this evidence? 403 would warrant exclusion of that
20 evidence.

21 MS. MRAZEK: Your Honor --

22 THE COURT: Those are my rulings. Anything further?

23 MS. MRAZEK: -- to clarify.

24 THE COURT: Yes, you may.

25 MS. MRAZEK: With respect to Exhibit 777.

1 THE COURT: 777?

2 MS. MRAZEK: Yes, your Honor.

3 THE COURT: Let me find that. Okay. I have 777.

4 MS. MRAZEK: Your Honor, the government would still
5 seek to admit 777.

6 In discussing this exhibit with Mr. Basurto, the
7 government will not elicit any information about what he was
8 told about this from Carlos Rovira, but Mr. Basurto helped
9 prepare this document. He saw this document. He has
10 personal knowledge of this document. And I would seek to --
11 permission of the Court to elicit that he used this document
12 to help pay bribes to CFE.

13 THE COURT: First of all, I think you're perfectly
14 free and entitled to ask him about his dealings with Enrique
15 Aguilar and -- and you're representing that he had some
16 dealings concerning 777?

17 MS. MRAZEK: Your Honor, to be clear, he didn't deal
18 directly with Enrique, because he went and -- the information
19 was shuttled back and forth through Carlos Rovira.

20 So, I will not be able to tell you, or to have
21 Mr. Basurto testify that he had a conversation explicitly
22 with Enrique Aguilar about this document. However, he
23 received --

24 THE COURT: Who -- had this witness -- how did
25 Mr. Basurto get this document?

1 MS. MRAZEK: He went to CFE. He went to Carlos
2 Rovira's office. Carlos Rovira was then Nestor Moreno's
3 operator. He then picked up this document from Carlos Rovira
4 with Mr. Enrique Aguilar's signature already on the document.
5 He then took the invoice, and he and his father brought it to
6 ABB Network Management for payment.

7 THE COURT: And that proves what in this case?

8 MS. MRAZEK: Your Honor, it proves that Enrique
9 Aguilar, at least signs invoices for Sorvill International.

10 The government has alleged in its Indictment that
11 Enrique Aguilar is the owner of Sorvill International. That
12 would be probative of that fact.

13 THE COURT: Okay. By the way, I -- I really don't
14 know the answer to this question. Was Enrique Aguilar
15 indicted in the ABB case?

16 MS. MRAZEK: No, your Honor.

17 THE COURT: Was he a witness -- did the ABB case go
18 to trial?

19 MS. MRAZEK: The ABB case is currently scheduled for
20 trial in May.

21 THE COURT: And who are the defendants who are going
22 to proceed to trial in that case?

23 MS. MRAZEK: The current defendant is the general
24 manager of ABB.

25 THE COURT: This is Mr. O'Shea?

1 MS. MRAZEK: Yes, your Honor.

2 THE COURT: Okay. And is Enrique Aguilar an
3 unindicted co-conspirator in that case?

4 MS. MRAZEK: Yes, your Honor.

5 THE COURT: And identified as such?

6 MS. MRAZEK: Yes, your Honor.

7 THE COURT: Okay.

8 MS. MRAZEK: As is Sorvill International.

9 THE COURT: So, this document shows that there's a
10 link between Aguilar and Sorvill, I grant you that. And I
11 think this witness could certainly testify to that much.

12 And then having linked Aguilar to Sorvill, what's the
13 relevance in this case, and the probative value in this case?

14 MS. MRAZEK: Your Honor, in addition to linking the
15 two together, Mr. Basurto would say that this document was
16 used to pay bribes.

17 THE COURT: Mr. Larson, do you want to be heard about
18 this exhibit?

19 MR. LARSON: Just that last point, your Honor. I
20 don't think there's any foundation with this witness that he
21 can say that Dr. Enrique Aguilar signed this document, as
22 Ms. Mrazek just said.

23 Reading from the report of interview, Paragraph 26
24 from an interview that took place on July 29th, 2009 --

25 THE COURT: This is an interview of whom?

1 MR. LARSON: I'm sorry?

2 THE COURT: A report of an interview of whom?

3 MR. LARSON: It was the FBI -- it's the IRS
4 memorandum of interview on Mr. Basurto.

5 THE COURT: Of this witness?

6 MR. LARSON: Of this witness.

7 THE COURT: It's a 302 of this witness?

8 MR. LARSON: It's not a 302, but it's an IRS, but
9 yes, same thing.

10 THE COURT: Okay.

11 MR. LARSON: He said as follows, *Rovira pointed*
12 *Enrique Aguilar out to Basurto when he visited Rovira at his*
13 *CFE office. Basurto has had no other interactions with*
14 *Mr. Aguilar.*

15 He also wrote, *Basurto reviewed an invoice from*
16 *Sorvill, et cetera, et cetera. He goes on to say that, the*
17 *invoices were created -- Rovira told Basurto that the*
18 *invoices were created so that Rovira, Moreno and other CFE*
19 *officials could get their money.*

20 There's nothing in any of the 302s or the reports of
21 interview that suggests, in any way, that this witness ever
22 interacted with Enrique Aguilar, ever saw him sign an
23 invoice. In fact, he will testify that he created the
24 invoices at the direction of Rovira. No foundation. All
25 hearsay.

1 THE COURT: Who would testify to --

2 MR. LARSON: Mr. Basurto will testify that he was
3 ordered to create the invoices. He created these. These
4 weren't created by Enrique Aguilar.

5 MS. MRAZEK: No, your Honor.

6 THE COURT: Okay. So, I understand Mr. Larson's
7 contention as to whether there's evidence that Enrique
8 Aguilar was actually involved in the preparation of Exhibit
9 777 or signed it. But even so, there's no basis in this case
10 to link Sorvill to the charges in this case, except for the
11 fact, if I followed what you said before, that there were two
12 payments from Lindsey to Grupo, and something like 15 to 21
13 days later, there were two payments from Grupo to Sorvill in
14 close but not identical amounts.

15 Did I get that straight?

16 MS. MRAZEK: Not exactly, your Honor. There was one
17 transfer. There were two transfers in, one transfer out.
18 Those two transfers in were the first money ever into the
19 Global Financial account. The one forty-five transfer out of
20 Sorvill was the first transfer out of that account.

21 THE COURT: But you've acknowledged, and I think
22 you -- I don't know if you took the deposition of this Agent
23 Durkin, but there's a lot of money flowing into and out of
24 the Grupo account, and a lot of payments to Sorvill out of
25 the Grupo account, right?

1 MS. MRAZEK: No, your Honor. This was the only
2 payment to Sorvill out of the Grupo account.

3 There's one other link that I think the Court should
4 be aware of that we laid out in the Indictment. Because
5 there are money laundering charges, and because it's
6 important for the government to prove how the yacht was
7 purchased, how these transfers to Arturo Hernandez occurred,
8 the government is putting on proof of those Sorvill bank
9 accounts, because the yacht wasn't only paid for by a check
10 from Global Financial. There were also two wire transfers
11 from Sorvill International authorized by Enrique Aguilar with
12 this same signature that appears on 777.

13 Likewise, just as Angela Aguilar authorizes two wire
14 transfers to family members of Arturo Hernandez, likewise
15 Enrique Aguilar authorizes two wire transfers to the same
16 family members from Sorvill. All of this evidence of the
17 commingling --

18 THE COURT: I missed the last part. Say it again,
19 please.

20 MS. MRAZEK: Yes, your Honor. There are --

21 THE COURT: Who authorized two transfers of what to
22 whom?

23 MS. MRAZEK: Yes, your Honor.

24 Arturo Hernandez has a mother and a brother. Angela
25 Aguilar authorized two wire transfers -- each wire transfer

1 was for a quarter of a million dollars -- to Arturo
2 Hernandez -- Arturo Hernandez's mother and Arturo Hernandez's
3 brother.

4 Thereafter, Enrique Aguilar authorized two wire
5 transfers both of \$50,000, one to Arturo Hernandez's mother,
6 one to Arturo Hernandez's brother.

7 The government would then put on financial evidence
8 to show --

9 THE COURT: These are transfers of money from Grupo?

10 MS. MRAZEK: Two from Grupo, two from Sorvill to the
11 same account.

12 THE COURT: And what's the link to Lindsey?

13 MS. MRAZEK: Lindsey Manufacturing contributed
14 roughly 70 percent of the money in the Global Financial
15 account.

16 THE COURT: Okay. So, I think there may be an
17 inference the jury could draw that there was laundering of
18 bribe payments from Lindsey, at least 70 percent of the
19 transfers, if it were done mathematically dollar-for-dollar,
20 right? That's the point?

21 MS. MRAZEK: Well, your Honor --

22 THE COURT: There's enough to permit an inference is
23 what I think you're saying, right?

24 MS. MRAZEK: Yes. There was more than enough money
25 contributed by Lindsey Manufacturing to cover all of these

1 transfers and more.

2 MR. HANDZLIK: Your Honor, I know that -- I'm sorry.

3 MS. MRAZEK: Those particular allegations I just
4 relayed to your Honor are all overt acts in the First
5 Superseding Indictment.

6 THE COURT: Which ones?

7 MS. MRAZEK: The --

8 THE COURT: Give me the numbers of the acts.

9 MS. MRAZEK: Yes, your Honor.

10 Your Honor, on Page 13 of the superseding
11 indictment -- First Superseding Indictment, Overt Act 64 is a
12 transfer from Sorvill to purchase the yacht. Overt Act 65 --
13 sorry. Overt -- one second, your Honor.

14 With respect to the transfers from Sorvill
15 International's Swiss bank account to the mother and brother
16 of Arturo Hernandez, those are Overt Acts 73 and 74.

17 THE COURT: Is there going to be evidence that the
18 government's going to offer that Arturo Hernandez authorized
19 payments, or authorized acceptance of the contract proposal
20 to Lindsey, or was involved in authorizing payments to
21 Lindsey?

22 MS. MRAZEK: Your Honor, the government's proof will
23 show that Arturo Hernandez was in charge of CFE at the
24 time -- at least until 2007. That he was the Director of
25 Operations, and as Mr. Basurto testified yesterday, the

1 Director of Operations had control over all of the operations
2 of CFE throughout the country.

3 In terms of specifically conversations with Arturo
4 Hernandez, the government does not anticipate such evidence.

5 THE COURT: Well, I think you should be permitted to
6 elicit testimony that -- from this witness Basurto that --
7 who gave him Exhibit 777?

8 MS. MRAZEK: That was Carlos Rovira, your Honor.

9 THE COURT: And --

10 MS. MRAZEK: The same is true for Exhibit 776, the
11 other invoice.

12 THE COURT: Pardon me?

13 MS. MRAZEK: There are two invoices. The other one
14 is Government's Exhibit 776. However, that one is not
15 signed.

16 THE COURT: What did this witness say about Carlos
17 Rovira yesterday?

18 MS. MRAZEK: Your Honor, Mr. Basurto testified that
19 Carlos Rovira was a CFE employee during the same period that
20 Nester Moreno was a CFE employee. I believe Mr. Moreno -- I
21 believe that there was testimony about Carlos Rovira's first
22 position, which was working with Nester Moreno.

23 I do not believe that I was able to elicit the
24 testimony yet yesterday that Carlos Rovira followed Nester
25 Moreno throughout the various changes in position that Nester

1 Moreno had at CFE. But he would testify that he was always
2 Nester Moreno's right-hand man and operator, and was the
3 person who Mr. Basurto had to discuss any bribe payments with
4 Nester Moreno in most circumstances.

5 THE COURT: But you're not planning to proffer any
6 evidence that Carlos Rovira had anything to do with the
7 allegations against LMC, except being a colleague of Moreno
8 and maybe a complicit in Moreno's acceptance of bribes
9 involving ABB, right?

10 MS. MRAZEK: Yes, your Honor. And given your Honor's
11 earlier ruling, I would not seek to elicit any conversations
12 between these co-conspirators, if that is what your Honor
13 would still like me to do.

14 THE COURT: Yes. That's what I'm ruling. And what
15 is this about 776?

16 MS. MRAZEK: I just wanted to alert your Honor that
17 776 is another Sorvill invoice that Mr. Basurto also got from
18 Carlos Rovira at Carlos Rovira's office at CFE that he would
19 testify was used to pay bribes.

20 THE COURT: It was used by whom?

21 MS. MRAZEK: It was used by Mr. Basurto, Carlos
22 Rovira, Enrique Aguilar, Nester Moreno, others at CFE,
23 O'Shea -- it was part of the conspiracy, your Honor.

24 THE COURT: So, this is a document that I take it,
25 you're going to use in the trial of O'Shea, and you're going

1 to use Basurto to say, I took this document to ABB and got
2 them to pay for it, and then this money was used to grease
3 the skids with Rovira, and Hernandez, and maybe Moreno,
4 right?

5 MS. MRAZEK: Yes. And others, your Honor.

6 THE COURT: And others.

7 So, you're representing to me that this witness is
8 going to say he took this document directly in person?

9 MS. MRAZEK: Yes, your Honor.

10 THE COURT: Okay. Because the way you started out by
11 trying to explain all this is to say it was used, but this is
12 the witness who used it, right?

13 MS. MRAZEK: Yes, your Honor.

14 Multiple people -- obviously, he didn't pay the
15 invoice, because that was done in Network Management.

16 THE COURT: I've been sitting up here trying to
17 glance through the transcript of yesterday's session, to the
18 extent there was testimony about Rovira, which I'm going to
19 give a cautionary instruction to the jury about.

20 Did you want to say something, Mr. Larson? Was it
21 you who stood --

22 MR. LARSON: I did, your Honor. I don't know what
23 your ruling is on 777 --

24 THE COURT: I'll tell you in a minute, but first I'm
25 giving you a chance to be heard.

1 MR. LARSON: Well, my point is that there is
2 absolutely no foundation for this witness to testify that
3 Dr. Enrique Aguilar signed this document.

4 There's no foundation for the last assertion that
5 Ms. Mrazek made that somehow this was used by Enrique
6 Aguilar. Their own witness, Mr. Basurto says that he had no
7 interaction with Dr. Enrique Aguilar.

8 THE COURT: Okay.

9 MR. LARSON: This is all hearsay and no foundation.

10 THE COURT: Okay. And you're right, but not right in
11 terms of whether or not the correct result is that it be
12 excluded from evidence.

13 You're going to be permitted to introduce 776 and 777
14 with these very explicit limitations.

15 MS. MRAZEK: Yes, your Honor.

16 THE COURT: As part of the way that you got ABB to
17 issue payments that were used for bribes by -- of people in
18 Mexico, did you use this exhibit?

19 Where did you get it from? He'll say, Rovira. Stop
20 there.

21 Absent any further evidence, there is no way you or
22 any of your colleagues will ever be permitted to argue
23 anything about Enrique Aguilar signing this document or being
24 complicit in that scheme. You're going to have to link it up
25 to Enrique Aguilar differently and directly.

1 And you, in cross-examining this witness, can, if you
2 choose to, make a point of that, saying you don't know who
3 actually prepared this document. You never met Enrique
4 Aguilar in connection with this document. You never talked
5 to him about it. You didn't get it from him, whatever you
6 want to do, you can.

7 MR. LARSON: Yes, your Honor.

8 MS. MRAZEK: Thank you, your Honor.

9 THE COURT: Anything else?

10 Now, my ruling is, that 90 percent of what we went
11 through on your proffer is inadmissible for the reasons I
12 said.

13 Now, I -- who first? You, Mr. Handzlik?

14 MR. HANDZLIK: I was going to pop up first, your
15 Honor.

16 I was -- I would like to point out, which I think is
17 now evident to the Court, that what Ms. Mrazek said about the
18 composition of the funds in the Grupo account at the time of
19 the transfers to the mother and the brother, whatever, she
20 said 70 percent of the funds in that account came from
21 Lindsey Manufacturing.

22 As the Court has heard already on an earlier motion,
23 and in looking at Mr. Durkin's analysis of the account, that
24 is -- that is incorrect. And of course your Honor already
25 stated to Ms. Mrazek that Agent Durkin had done an analysis

1 and there was a lot of other funds in the account.

2 I say this -- if the Court is permitting what the
3 Court's permitting I understand that, and I would like to get
4 a clarification on whatever limited use or what instruction
5 is going to be given to the jury about this, because it -- if
6 it's coming in for any purpose, it has nothing to do with the
7 Lindsey defendants. And I assume --

8 THE COURT: What limiting instruction are you
9 requesting me to give?

10 MR. HANDZLIK: Well, what we're requesting, and I
11 haven't conferred explicitly with Ms. Levine on this, is that
12 the testimony of this witness is limited to Angela Aguilar
13 and should not be considered against Dr. Lindsey, Mr. Lee,
14 and Lindsey Manufacturing. That's what we request.

15 I was actually addressing another point. It really
16 goes, I guess, to the weight, and we're prepared to show that
17 it was much -- I mean it wasn't 70 percent Lindsey money
18 in -- that's different.

19 THE COURT: That you'll have an opportunity to show.
20 I don't make a finding as to what percent it was. I'm just
21 aware of what Mr. Durkin's analysis in general concluded.

22 Anything further, Mr. Handzlik?

23 MR. HANDZLIK: No, your Honor.

24 THE COURT: Ms. Levine?

25 MS. LEVINE: Thank you, your Honor. There are a few

1 points I'd like to make.

2 First, it is clear that testimony has absolutely
3 nothing to do with Mr. Lee. Extraordinarily prejudicial.
4 And the amount of time this is going to take, your Honor,
5 Ms. Mrazek says she hasn't had time to prepare.

6 What I have in court are 108 letters sent starting --
7 she didn't get all of them, but starting May 11th, 2007 from
8 the ABB lawyers with the proffers in this case, and the --

9 THE COURT: In which case?

10 MS. LEVINE: In her ABB case. 108 different letters
11 proffering information to her starting -- she wasn't there
12 for the first --

13 THE COURT: Okay. I don't -- I don't know what
14 you're getting into, but I don't need to know the details on
15 who was there and when.

16 MS. LEVINE: Your Honor --

17 THE COURT: Somebody handed me --

18 MS. LEVINE: I did that, your Honor. The e-mail?

19 THE COURT: Yes. An e-mail from Ms. Mrazek to,
20 apparently, a lawyer for Basurto. I don't know which
21 Basurto.

22 MS. LEVINE: This Basurto, your Honor. That was
23 produced to us after I -- as Brady material after being
24 produced to the Court in camera.

25 And that's the second problem, is that it appears on

1 the face of it that this witness knows nothing whatsoever, as
2 Ms. Mrazek admits, about our company --

3 THE COURT: Let the record reflect that what
4 Ms. Levine is referring to in this e-mail, which is Bates
5 stamped in camera five zeros 8 is --

6 MS. LEVINE: Yes, your Honor. In a --

7 THE COURT: -- is a statement that says from
8 Ms. Mrazek to some lawyer representing this witness, Basurto,
9 that he, Basurto, doesn't know anything about the corrupt
10 company directly involved in the L.A. case, Lindsey
11 Manufacturing.

12 Okay. Anything else?

13 MS. LEVINE: And that it's sent October 10th, before
14 Mr. Lee was charged in this case. It's offering -- it's
15 telling Mr. Basurto what information is going to be
16 requested, knowing he doesn't know it. Offering him
17 cooperation credit to come up with some information to
18 testify --

19 THE COURT: All right. Well, that's
20 cross-examination. I -- I can see what it says in here.

21 What does it have to do with what we're trying to do
22 here about determining rules of evidence?

23 MS. LEVINE: It's a -- your Honor --

24 THE COURT: Do you join in Mr. Handzlik's request for
25 a limiting instruction?

1 MS. LEVINE: Absolutely, your Honor.

2 THE COURT: Okay. What's your response to that
3 request?

4 MS. MRAZEK: Your Honor, this evidence -- I think
5 that such a limiting instruction should be crafted carefully,
6 because --

7 THE COURT: And what would you like it to say?

8 MS. MRAZEK: Your Honor, if I may -- may I have
9 moment?

10 THE COURT: Yes.

11 MR. HANDZLIK: Your Honor, just to be clear on the
12 record. By discussing the -- and requesting a limiting
13 instruction, I was not waiving any argument that the Lindsey
14 defendants have with 403, 404, relevance, anything.

15 THE COURT: Okay. I understand.

16 MR. HANDZLIK: Thank you.

17 MR. LARSON: Your Honor, Mrs. Aguilar also has
18 concerns about this limiting instruction that you're being
19 asked to proffer.

20 My position, of course, was that it has nothing to do
21 with Enrique Aguilar, because there is no foundation. There
22 is not even a remote connection of this to Mrs. Angela
23 Aguilar, and I'm concerned about you telling the jury, with
24 the force of the Court, that this is to be considered --

25 THE COURT: I don't have any force in this courtroom

1 anymore, but anyway go ahead.

2 MR. LARSON: I -- anyways. I won't comment, but I do
3 think that there's a real problem by highlighting the purpose
4 of this evidence.

5 MS. MRAZEK: Your Honor, the government's concern is
6 that whatever limiting instruction should still allow the
7 jury to consider this evidence as probative of the overt acts
8 that are alleged in the Indictment, and the general
9 allegation about Sorvill. So, I think that --

10 THE COURT: A general allegation meaning what
11 allegation?

12 MS. MRAZEK: That Sorvill is a company that was used
13 as a sales -- it was a sales representation company with bank
14 accounts in Germany and Switzerland. And who controls the
15 Sorvill account.

16 So, whatever the limiting instruction, I think that
17 it's fine to have a limiting instruction, appropriate to have
18 a limiting instruction that ABB is not Lindsey Manufacturing,
19 it's not SBB. That Mr. Basurto is not testifying that he
20 ever passed any bribes to -- from Lindsey Manufacturing to
21 any CFE officials, but the importance of understanding what
22 Sorvill is and that it is Mr. Sorvill -- Mr. Enrique
23 Aguilar's company, is relevant evidence.

24 THE COURT: He hasn't proven it's Mr. Aguilar's
25 company. It's being offered to try to prove it. I'm not

1 going to instruct them what it proves.

2 MS. MRAZEK: Yes, your Honor. I'm not saying that
3 you should instruct the jury about what it proves. I'm
4 simply suggesting, that the Court offer a limiting
5 instruction that goes more centrally to the defendants'
6 concern that there not be confusion that Mr. Basurto is
7 testifying that he helped in any way pass bribes from Lindsey
8 Manufacturing.

9 THE COURT: What's the full name of Sorvill?

10 MS. MRAZEK: Sorvill International SA.

11 *(Pause in the proceedings.)*

12 MR. MILLER: Your Honor may I step out for a moment
13 to use the bathroom?

14 THE COURT: Yes.

15 All right. This is what I'm going to say. It may
16 not come out precisely in these words, because I just
17 scribbled something.

18 This witness, Mr. Basurto, has testified about his
19 role in an entirely different conspiracy concerning a company
20 known as ABB. This case doesn't involve ABB.

21 I have instructed the prosecution to go no further in
22 attempting to elicit testimony about Mr. Basurto's role in
23 the ABB matter.

24 The sole basis for allowing further testimony from
25 Mr. Basurto will be whether he has admissible -- whether he

1 has evidence of the role that Sorvill International SA may --
2 allegedly played in this case.

3 Although the defense lawyers will be permitted to
4 cross-examine Mr. Basurto about yesterday's testimony, I
5 instruct you that the only issues that you may take that
6 testimony -- only issues that you may -- only issues that
7 that testimony is relevant to -- may be relevant to, are
8 limited to the roles that Sorvill International and Enrique
9 Aguilar are alleged to have played in this case. I'll repeat
10 it.

11 I'm going to tell them what he testified about
12 yesterday about ABB. That this case doesn't involve ABB.
13 That I instructed the prosecution to go no further in
14 attempting to elicit testimony about what he did in the ABB
15 case.

16 That he will be permitted to continue testifying
17 solely about the role that Sorvill and Enrique Aguilar
18 allegedly played in this case.

19 The defense lawyers will be permitted to
20 cross-examine about yesterday's testimony, but the only
21 issues that the testimony may be relevant to, are those
22 limited to the roles that Sorvill and Enrique Aguilar are
23 alleged to have played in this case. All right.

24 Yes, Mr. Handzlik?

25 MR. HANDZLIK: Your Honor, the Court has not

1 addressed, so far, the assertion of Ms. Mrazek that,
2 notwithstanding the limiting instruction that you've just
3 crafted, that they be permitted to eventually argue to the
4 jury with respect to Overt Acts 73 and 74, that those overt
5 acts were in furtherance of the conspiracy that involves
6 Lindsey Manufacturing --

7 THE COURT: I'm not going to preclude them from
8 arguing that. Let's see what they link up between Sorvill.

9 MR. HANDZLIK: There is no Sorvill part of this case,
10 your Honor. There is no Sorvill --

11 THE COURT: That's overstating it, Mr. Handzlik. I'm
12 not going to preclude evidence that could be relevant to
13 prove Overt Acts 73 and 74. There may not be such evidence,
14 but that remains to be seen.

15 MR. HANDZLIK: But, your Honor the only -- sorry.

16 THE COURT: So, what are you asking me to do on this
17 instruction?

18 MR. HANDZLIK: Well, we're asking you -- and we had
19 asked you earlier -- to preclude the testimony of this
20 witness because it doesn't relate to these defendants, the
21 Lindsey defendants.

22 THE COURT: That's not a correct conclusion to draw
23 at this phase. Maybe at a later phase.

24 The government hasn't rested. I don't know what
25 their full case is. It's been a very confusing case thus

1 far, but I'm not going to preclude them from trying to prove
2 those overt acts. So, I don't think I need further argument
3 from either side on that.

4 MR. HANDZLIK: I understand that, your Honor, but I
5 would like to make the record on this. 404 says acts of the
6 accused, character of the accused.

7 The evidence that they intend to admit regarding
8 Sorvill and these other things, is the most odious kind of
9 404(b) evidence, because they're going to seek to use the
10 actions of other people, and their intent or character,
11 whatever, against these defendants.

12 THE COURT: No. They're going to try to use evidence
13 of Grupo and Sorvill to establish how the money was
14 laundered, and how the payments made their way to the corrupt
15 officials. And that's relevant.

16 I don't want to argue about this. I'm not precluding
17 you from having later instructions, limiting instructions,
18 from arguing about what the evidence shows or as to whom, if
19 anyone, it shows anything, but I don't think I have to deal
20 with that now.

21 MR. HANDZLIK: Your Honor --

22 THE COURT: So, you've made your record. I haven't
23 precluded you from further --

24 MR. HANDZLIK: Your Honor, may I please make one
25 more -- I mean, I thought that, quite frankly, that begging

1 and whining and pleading was the province of the defense not
2 the prosecution. So, I'm going to revert to type here, your
3 Honor, and say, what money? What money of Lindsey goes to
4 Sorvill that's alleged to be part of this case? Zero. None.

5 The -- she cited --

6 THE COURT: Make that argument when the case is over.
7 If there's no link between the monies that Lindsey paid to
8 Grupo, and Grupo paid to Sorvill, then I'll throw the case
9 out on a Rule 29. It is not timely to be battering me with
10 this now.

11 MR. HANDZLIK: I don't intend to batter the Court at
12 all. I intend to make a record. 403 --

13 THE COURT: You've made your record.

14 MR. HANDZLIK: 403 --

15 THE COURT: You've made your record.

16 MR. HANDZLIK: Thank you, your Honor.

17 THE COURT: Okay. Now, we've been going for almost
18 an hour -- more than an hour.

19 Yes, Ms. Levine?

20 MS. LEVINE: Just briefly, your Honor. Given the
21 nature of the questioning yesterday, I worry that
22 Ms. Mrazek's questioning will lend a place for this witness
23 to say things, and I don't want to jump up and say something
24 that's overbearing, but I do want to have some way to
25 object --

1 THE COURT: So, are you asking me to instruct the
2 prosecution to tell the witness what to avoid?

3 MS. LEVINE: Both that, your Honor, and some
4 objection that would be clear of what I'm objecting to
5 without saying, objecting based on what the Court ruled.
6 Some sort of way to convey that, because the dynamic that was
7 going on here suggests that there's been, and in the 302s, a
8 lot of discussion between Ms. Mrazek and the witness. And I
9 know that they've had a long-sustaining witness cooperator
10 relationship, and I fear that.

11 THE COURT: Okay. I now instruct the government in
12 plain language -- and Basurto was limiting his answers
13 yesterday. He didn't -- he didn't volunteer information that
14 was narrative or prejudicial. But you tell him that whatever
15 he was prepared to testify about -- 98 percent of it,
16 probably, I'm just guessing -- is out of bounds. It won't be
17 permissible, and don't -- I'm instructing you not to get into
18 it.

19 Now, let's use the time, because we have to break at
20 12 -- although in the end this may have been a time saver,
21 because this could have taken hours, and hours, and hours to
22 struggle through before I could understand what, if any,
23 connection it has. It has zero.

24 So, that's going to be the gist of my instruction.
25 Both sides, depending on the outcome of this case, of course,

1 have rights of appeal. Or to uphold rulings, depending on
2 the outcome.

3 I don't need more argument at this phase. So, let's
4 bring the jurors in, please.

5 MS. LEVINE: Your Honor, can I have two minutes to
6 run down the hall though?

7 THE COURT: All right.

8 MS. LEVINE: Thank you, your Honor.

9 MR. HANDZLIK: I'm going to take the same
10 opportunity.

11 THE COURT: Okay. That's fine.

12 MR. HANDZLIK: Well, it may be -- it may be more
13 like --

14 THE COURT: All of you should. We'll take a
15 five-minute break.

16 MR. GOLDBERG: Your Honor, during the break, we'll
17 instruct the witness.

18 THE COURT: Do that now, please.

19 MR. GOLDBERG: Thank you.

20 (Off the record at 9:47 a.m.)

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VICTORIA L. VALINE, CSR No. 3036, RMR, CRR
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\$	481 [1] - 736:2	759:2; 760:11, 15; 761:15; 766:18, 20, 23; 767:1; 771:15	Angela [11] - 732:10; 733:22; 746:15; 751:16, 19; 752:17; 753:9; 759:13, 24; 767:12; 770:22	748:18; 749:25; 750:10, 17, 20; 751:12; 752:4; 753:17; 754:6, 8, 21, 25; 756:15; 757:4, 12-13, 15, 17; 758:2; 761:25; 762:6, 18; 763:3, 17, 21; 764:1; 765:6; 768:20-22; 769:8, 15; 771:19; 772:6, 18, 25; 773:4; 777:12
\$145,000 [1] - 732:11	5	accounts [4] - 753:2, 4; 759:9; 771:14	ANGELES [1] - 729:1	Basurto's [5] - 741:12; 743:3; 744:21; 753:15; 772:22
\$174,000 [1] - 732:8	5368 [3] - 735:12, 17	accused [2] - 775:6	answer [1] - 755:14	Basurtos [1] - 745:7
\$50,000 [1] - 760:5	5th [1] - 736:12	acknowledged [1] - 758:21	answers [1] - 777:12	Bates [4] - 735:10, 12; 746:24; 769:4
'	6	acquaintance [1] - 751:13	anticipate [1] - 762:4	bathroom [1] - 772:13
'01 [1] - 747:18	64 [1] - 761:11	act [1] - 734:20	anyway [1] - 771:1	batter [1] - 776:11
'97 [1] - 747:18	65 [1] - 761:12	Act [2] - 761:11	anyways [1] - 771:2	battering [1] - 776:9
'98 [1] - 744:5		actions [1] - 775:10	apart [1] - 736:13	becomes [1] - 738:23
1	7	activity [1] - 735:2	appeal [1] - 778:1	begging [1] - 775:25
1 [2] - 730:9; 740:13	7 [1] - 729:1	acts [6] - 761:4, 8; 771:7; 774:5; 775:2, 5	appropriate [3] - 729:15; 746:19; 771:17	begins [1] - 747:18
104 [1] - 738:25	70 [4] - 760:14, 18; 766:20; 767:17	Acts [3] - 761:16; 774:4, 13	APRIL [1] - 729:1	belabor [1] - 753:7
106 [1] - 738:25	73 [3] - 761:16; 774:4, 13	actual [2] - 741:10; 747:8	argue [6] - 732:17; 737:6; 751:17; 765:22; 774:3; 775:16	best [5] - 736:18; 744:1; 749:11; 750:1; 751:11
108 [2] - 768:6, 10	74 [3] - 761:16; 774:4, 13	add [1] - 737:2	arguing [2] - 774:8; 775:18	between [7] - 747:5; 749:7; 756:10; 763:12; 774:8; 776:7; 777:8
10th [1] - 769:13	776 [5] - 762:10, 14; 763:15, 17; 765:13	addition [1] - 756:14	argument [6] - 740:12; 747:4; 770:13; 775:2; 776:6; 778:3	bit [1] - 729:10
11th [1] - 768:7	777 [10] - 753:25; 754:1, 3, 5, 16; 758:9; 759:12; 762:7; 764:23; 765:13	additional [1] - 737:2	arguments [1] - 741:16	block [1] - 753:6
12 [1] - 777:20	778 [4] - 729:13; 745:12; 748:13, 15	address [1] - 749:18	Arturo [15] - 746:7; 751:4; 759:7, 14, 24; 760:1, 5-6; 761:16, 18, 23; 762:3	bounds [1] - 777:16
13 [1] - 761:10	779 [5] - 729:13; 745:12, 16; 746:24; 747:13	addressed [1] - 774:1	Aryan [1] - 739:9	break [3] - 777:19; 778:15
145,000 [1] - 735:22		addressing [1] - 767:15	aspect [1] - 740:2	breakdown [2] - 745:1; 748:16
15 [3] - 742:13; 747:12; 758:12		admissible [9] - 730:7; 738:14, 23; 739:4, 10; 742:6; 743:17, 23; 772:25	assertion [2] - 765:4; 774:1	bribe [20] - 730:22, 25; 733:19; 736:20; 738:5; 739:20; 740:10; 742:23; 744:9, 24; 745:25; 746:1; 747:8; 748:16, 25; 749:1, 12; 752:2; 760:18; 763:3
17 [1] - 736:13		admit [2] - 754:5; 775:7	assume [1] - 767:7	bribe-laden [1] - 742:23
1998 [1] - 744:10		admits [1] - 769:2	attached [2] - 732:14; 733:22	bribee [1] - 746:2
1st [1] - 736:11		afford [2] - 752:1, 19	ago [1] - 739:1	bribees [1] - 749:16
2	8	afford [2] - 752:1, 19	agent [2] - 758:22; 766:25	bribers [2] - 736:21; 749:16
2 [1] - 743:3	8 [1] - 769:5	Agent [2] - 758:22; 766:25	Aguilar [55] - 729:6; 732:11, 15; 733:22; 734:4; 737:14, 16, 18; 738:4; 743:4, 8, 10, 15, 20, 24; 746:15; 747:23; 751:16, 19; 752:17; 753:9; 754:15, 22; 755:9, 11, 14; 756:2, 10, 12, 21; 757:12, 14, 22; 758:4, 8; 759:11, 13, 15, 25; 760:4; 763:22; 765:3, 6-7, 23, 25; 766:4; 767:12; 770:17, 21, 23; 773:9, 17, 22	bribery [5] - 734:15; 741:17, 20; 747:6; 749:11
2002 [4] - 732:8; 734:16; 736:11	8:00 [1] - 729:2	Ag [1] - 739:1	Aguilar's [3] - 755:4; 771:23	bribes [23] - 731:3; 732:1, 4, 13; 740:25; 741:1; 742:9; 744:6, 11, 15; 749:7; 752:18; 754:12; 756:16; 763:8, 19; 765:17; 771:20; 772:7
2004 [3] - 734:12; 744:5, 9	9	ahead [1] - 771:1	ago [1] - 739:1	bribing [1] - 740:16
2007 [2] - 761:24; 768:7	90 [1] - 766:10	akin [1] - 738:25	attempt [3] - 747:21; 748:9	briefly [1] - 776:20
2008 [1] - 734:16	98 [1] - 777:15	alert [1] - 763:16	attempting [2] - 772:22; 773:14	bring [2] - 747:21; 778:4
2009 [1] - 756:24	9:47 [1] - 778:20	allegation [3] - 771:9	attention [1] - 735:15	brokerage [1] - 732:10
2011 [1] - 729:1	A	allegations [2] - 761:3; 763:7	attributed [1] - 733:12	brother [5] - 759:24; 760:3, 6; 761:15; 766:19
21 [2] - 736:13; 758:12	A.M [1] - 729:2	alleged [11] - 734:16, 18, 20; 740:25; 746:22; 750:13; 755:10; 771:8; 773:9, 23; 776:4	August [3] - 736:11; 747:18	Brotherhood [1] - 739:9
25th [1] - 747:18	a.m [1] - 778:20	allegedly [2] - 773:2, 18	authentic [1] - 735:1	brought [1] - 755:5
26 [1] - 756:23	ABB [30] - 732:13; 733:14; 735:12; 736:20; 737:12, 15, 24; 738:12; 741:11, 14; 745:19; 746:23; 747:7; 755:6, 15, 17, 19, 24; 763:9; 764:1; 765:16; 768:8, 10; 771:18; 772:20, 23; 773:12, 14	allow [1] - 771:6	authorization [4] - 732:11, 14, 16; 733:23	burden [1] - 739:25
29 [1] - 776:9	able [3] - 740:24; 754:20; 762:23	allowed [2] - 742:12; 749:21	authorized [6] - 759:11, 21, 25; 760:4; 761:18	business [2] - 735:2
29th [1] - 756:24	absent [1] - 765:21	allowing [1] - 772:24	authorizes [2] - 759:13, 15	C
3	absolutely [5] - 749:10; 750:1; 765:2; 768:2; 770:1	almost [2] - 750:6; 776:17	authorizing [1] - 761:20	CALIFORNIA [1] - 729:1
3 [4] - 748:19; 750:20; 751:15; 752:17	Academy [2] - 734:10, 24	amount [3] - 741:11; 750:18; 768:4	avoid [1] - 777:2	camera [2] - 768:24; 769:5
302 [2] - 757:7	acceptance [2] - 761:19; 763:8	amounts [1] - 758:14	aware [2] - 759:4; 767:21	carefully [1] - 770:5
302s [2] - 757:20; 777:7	access [1] - 753:3	analogy [1] - 739:15	awhile [1] - 742:17	Carlos [26] - 731:2; 738:2, 16; 739:1; 746:3, 7; 747:22;
3505 [1] - 735:1	access [1] - 753:3	analysis [3] - 766:23, 25; 767:21	B	
3WT [1] - 748:19	according [1] - 747:19		Bank [1] - 734:25	
4	accordingly [1] - 750:17		bank [9] - 732:12; 733:21; 734:3; 753:1, 4; 759:8; 761:15; 771:13	
403 [5] - 750:7; 753:19; 770:14; 776:12, 14	account [31] - 732:10, 12-13; 733:18, 20-21; 734:1, 3, 6, 8; 736:4, 8-9; 739:19, 23; 741:6; 758:19, 24-25;		barrier [1] - 743:13	
404 [2] - 770:14; 775:5			based [1] - 777:5	
404(b) [2] - 750:8; 775:9			bases [1] - 742:7	
404(b) [1] - 742:7			basis [7] - 741:14; 744:2; 750:7, 19; 751:3; 758:9; 772:24	
434 [2] - 735:7			Basurto [61] - 731:22; 733:23; 736:19; 737:4, 13, 17; 738:11, 14; 739:2; 740:7, 17; 741:7; 742:23; 743:19; 744:1, 6, 14; 745:8, 18;	
480 [1] - 736:2				

<p>748:1, 11, 20; 750:22; 754:8, 19; 755:1-3; 762:8, 16, 19, 21, 24; 763:6, 18, 21</p> <p>case [82] - 729:6, 8; 730:6; 731:16, 18, 20-21; 732:3; 734:14, 19; 736:22, 24; 738:13, 17-18; 739:2-4; 740:10, 15, 25; 741:4, 14-15; 743:11; 744:19; 746:23, 25; 747:14, 25; 748:4; 749:4, 15, 20; 750:9, 11-12, 14, 20, 23-24; 751:1, 5, 19; 752:18; 755:7, 15, 17, 19, 22; 756:3, 13; 758:9; 768:8-10; 769:10, 14; 772:20; 773:2, 9, 12, 15, 18, 23; 774:9, 25; 776:4, 6, 8; 777:25</p> <p>cautionary [1] - 764:19</p> <p>centrally [1] - 772:5</p> <p>certainly [3] - 750:6, 12; 756:11</p> <p>cetera [2] - 757:16</p> <p>CFE [24] - 731:7; 732:4; 733:19; 739:20; 741:17; 742:8; 744:15, 19; 746:4; 748:2, 21; 754:12; 755:1; 757:13, 18; 761:23; 762:2, 19-20; 763:1, 18, 22; 771:21</p> <p>challenge [1] - 741:25</p> <p>chance [1] - 764:25</p> <p>changes [2] - 751:17; 762:25</p> <p>character [2] - 775:6, 10</p> <p>charge [1] - 761:23</p> <p>charged [3] - 738:21; 739:21; 769:14</p> <p>charges [2] - 758:10; 759:5</p> <p>check [4] - 743:14, 16-17; 759:9</p> <p>choose [1] - 766:2</p> <p>chosen [1] - 738:5</p> <p>circumstances [2] - 741:18; 763:4</p> <p>cited [1] - 776:5</p> <p>civil [3] - 751:20; 752:1, 22</p> <p>clarification [1] - 767:4</p> <p>clarify [1] - 753:23</p> <p>clear [4] - 754:17; 768:2; 770:11; 777:4</p> <p>clerk [1] - 729:9</p> <p>close [2] - 747:5; 758:14</p> <p>close-in-time [1] - 747:5</p> <p>co [13] - 731:17; 738:7, 10, 17, 19; 739:2-4; 750:11, 13, 23; 756:3; 763:12</p> <p>co-conspirator [9] - 738:7, 10, 17, 19; 739:2-4; 750:23; 756:3</p> <p>co-conspirators [4] - 731:17; 750:11, 13; 763:12</p> <p>coffee [2] - 729:10; 743:20</p> <p>colleague [1] - 763:7</p> <p>colleagues [3] - 740:9; 749:19; 765:22</p> <p>column [2] - 745:22; 748:18</p> <p>coming [1] - 767:6</p> <p>comment [1] - 771:2</p> <p>commingled [1] - 739:19</p> <p>commingling [1] - 759:17</p>	<p>commissions [6] - 744:23, 25; 745:1, 3, 22</p> <p>companies [2] - 731:5; 738:4</p> <p>company [11] - 732:1; 743:14; 744:5; 748:22; 769:2, 10; 771:12, 23, 25; 772:19</p> <p>comparing [1] - 741:7</p> <p>completed [1] - 749:13</p> <p>complicit [2] - 763:8; 765:24</p> <p>composition [1] - 766:18</p> <p>comprehensible [1] - 741:13</p> <p>computer [1] - 737:7</p> <p>concern [3] - 730:4; 771:5; 772:6</p> <p>concerned [1] - 770:23</p> <p>concerning [4] - 730:20; 741:11; 754:16; 772:19</p> <p>concerns [1] - 770:18</p> <p>concluded [1] - 767:21</p> <p>conclusion [1] - 774:22</p> <p>conducted [1] - 735:2</p> <p>conferred [1] - 767:11</p> <p>confusing [3] - 742:2; 746:22; 774:25</p> <p>confusion [2] - 750:5; 772:6</p> <p>congratulations [1] - 750:9</p> <p>connection [4] - 734:13; 766:4; 770:22; 777:23</p> <p>consider [1] - 771:7</p> <p>considered [2] - 767:13; 770:24</p> <p>consisted [1] - 753:2</p> <p>conspiracy [16] - 738:11, 20, 22; 739:7, 10, 22; 740:10; 743:7, 25; 746:21; 747:19; 763:23; 772:19; 774:5</p> <p>conspirator [9] - 738:7, 10, 17, 19; 739:2-4; 750:23; 756:3</p> <p>conspirators [8] - 731:17; 737:10; 743:9, 11; 748:12; 750:11, 13; 763:12</p> <p>contemporaneous [2] - 733:9, 11</p> <p>contention [2] - 749:9; 758:7</p> <p>context [1] - 730:5</p> <p>continue [1] - 773:16</p> <p>contract [3] - 748:17; 749:2; 761:19</p> <p>contracts [11] - 730:20; 740:14, 18; 741:10, 18; 742:25; 747:6-8, 10; 749:16</p> <p>contributed [2] - 760:13, 25</p> <p>control [2] - 748:7; 762:1</p> <p>controls [1] - 771:14</p> <p>conversation [1] - 754:21</p> <p>conversations [7] - 730:19; 738:1; 750:21; 751:3; 753:18; 762:3; 763:11</p>	<p>convey [1] - 777:6</p> <p>conviction [1] - 750:10</p> <p>convoluted [1] - 736:18</p> <p>cooperation [1] - 769:17</p> <p>cooperator [1] - 777:9</p> <p>copy [1] - 745:19</p> <p>correct [4] - 733:3, 6; 765:11; 774:22</p> <p>correlation [1] - 749:6</p> <p>corrupt [2] - 769:9; 775:14</p> <p>cost [2] - 751:24; 752:8</p> <p>count [1] - 739:22</p> <p>country [1] - 762:2</p> <p>course [3] - 766:24; 770:20; 777:25</p> <p>court [2] - 742:12; 768:6</p> <p>Court [11] - 754:11; 759:3; 766:17, 22; 767:2; 768:24; 770:24; 772:4; 773:25; 776:11; 777:5</p> <p>COURT [177] - 729:4, 20; 730:1, 12, 16, 21; 731:8, 11, 15, 20, 24; 732:3, 19, 21, 24; 733:2, 8, 11, 17, 20; 734:2, 5, 11, 13, 17, 22; 735:4, 8, 13, 17, 20; 736:5, 8, 10, 13, 16; 737:3, 7, 13, 22; 738:6, 9, 13, 16, 24; 739:6, 9, 14, 17; 740:1, 19, 21, 24; 741:12, 24; 742:15; 743:2, 11, 13; 744:5, 10, 12, 17; 745:4, 6, 9, 12, 15, 17; 746:1, 5, 10, 14, 20; 747:2, 12, 17, 25; 748:3, 9, 13, 23; 749:3, 9; 750:17; 751:9; 752:7, 11, 15; 753:1, 5, 12, 22, 24; 754:1, 3, 13, 24; 755:7, 13, 17, 21, 25; 756:2, 5, 7, 9, 17, 25; 757:2, 5, 7, 10; 758:1, 6, 21; 759:18, 21; 760:9, 12, 16, 22; 761:6, 8, 17; 762:5, 9, 12, 16; 763:5, 14, 20, 24; 764:6, 10, 16, 24; 765:8, 10, 16; 766:9; 767:8, 19, 24; 768:9, 13, 17, 19; 769:3, 7, 19, 24; 770:2, 7, 10, 15, 25; 771:10, 24; 772:9, 14; 774:7, 11, 16, 22; 775:12, 22; 776:6, 13, 15, 17; 777:1, 11; 778:7, 11, 14, 18</p> <p>Court's [1] - 767:3</p> <p>courtroom [3] - 729:23; 770:25</p> <p>cover [1] - 760:25</p> <p>crafted [2] - 770:5; 774:3</p> <p>create [4] - 737:5, 7, 14; 758:3</p> <p>created [5] - 757:17, 23; 758:3</p> <p>creating [1] - 737:8</p> <p>credit [1] - 769:17</p> <p>criminal [2] - 738:21; 750:21</p> <p>cross [4] - 766:1; 769:20; 773:4, 20</p> <p>cross-examination [1] - 769:20</p> <p>cross-examine [2] - 773:4, 20</p> <p>cross-examining [1] - 766:1</p>	<p>cup [2] - 729:10; 743:20</p> <p>current [1] - 755:23</p>	<p>D</p> <p>dates [2] - 736:10</p> <p>days [3] - 736:13; 758:13</p> <p>deal [6] - 746:15-17; 747:22; 754:17; 775:19</p> <p>dealings [2] - 754:14, 16</p> <p>dealt [1] - 730:14</p> <p>decide [1] - 740:6</p> <p>defendant [8] - 733:6; 739:1, 3; 740:2; 750:22; 751:4, 19; 755:23</p> <p>defendants [15] - 729:7, 14; 731:16; 732:5; 734:25; 746:11; 749:23; 750:14; 755:21; 767:7; 770:14; 774:20; 775:11</p> <p>defendants' [4] - 741:16; 742:22; 749:18; 772:5</p> <p>defense [8] - 741:23-25; 749:6, 18; 773:3, 19; 776:1</p> <p>defense's [2] - 747:4; 749:6</p> <p>delay [2] - 749:14; 750:5</p> <p>demonstrate [1] - 751:18</p> <p>demonstrates [1] - 748:24</p> <p>deposition [4] - 742:14; 748:9, 11; 758:22</p> <p>details [4] - 736:3; 737:2, 4; 768:14</p> <p>determining [1] - 769:22</p> <p>difference [2] - 739:14, 18</p> <p>different [15] - 736:20; 739:19; 741:4; 742:25; 744:19; 749:15-17; 767:18; 768:10; 772:19</p> <p>differently [1] - 765:25</p> <p>direction [1] - 757:24</p> <p>directly [8] - 730:14, 25; 733:7; 747:23; 754:18; 764:8; 765:25; 769:10</p> <p>Director [2] - 761:24; 762:1</p> <p>discuss [1] - 763:3</p> <p>discussed [1] - 744:20</p> <p>discussing [2] - 754:6; 770:12</p> <p>discussion [1] - 777:8</p> <p>disproving [1] - 746:21</p> <p>document [23] - 735:9, 20-21, 23; 746:23; 754:9-11, 22, 25; 755:3; 756:9, 15, 21; 763:24; 764:1, 8; 765:3, 23; 766:3</p> <p>documents [8] - 733:14; 735:25; 736:1; 741:3, 5, 8; 742:10; 749:13</p> <p>dollar [2] - 760:19</p> <p>dollar-for-dollar [1] - 760:19</p> <p>dollars [1] - 760:1</p> <p>done [6] - 734:11; 750:15; 752:20; 760:19; 764:15; 766:25</p> <p>down [2] - 741:12; 778:6</p>	<p>Dr [4] - 756:21; 765:3, 7; 767:13</p> <p>draw [2] - 760:17; 774:22</p> <p>Dresdner [4] - 733:21; 734:3, 6, 25</p> <p>drew [1] - 739:15</p> <p>due [1] - 751:13</p> <p>during [4] - 748:16; 751:13; 762:19; 778:16</p> <p>Durkin [2] - 758:23; 766:25</p> <p>Durkin's [2] - 766:23; 767:21</p> <p>dynamic [1] - 777:6</p>	<p>E</p> <p>e-mail [3] - 768:18; 769:4</p> <p>education [2] - 734:10, 18</p> <p>effort [2] - 737:9; 742:3</p> <p>either [2] - 730:6; 775:3</p> <p>element [1] - 753:9</p> <p>elements [1] - 739:24</p> <p>elicit [8] - 753:14; 754:7, 11; 762:6, 23; 763:11; 772:22; 773:14</p> <p>elicited [1] - 730:13</p> <p>eliciting [1] - 730:21</p> <p>employee [2] - 762:19</p> <p>end [1] - 777:20</p> <p>ends [1] - 747:18</p> <p>engaged [3] - 738:11; 739:10</p> <p>Enrique [36] - 737:14, 16; 738:4; 743:4, 8, 10; 747:22; 754:14, 18, 22; 755:4, 8, 11, 14; 756:2, 21; 757:12, 22; 758:4, 7; 759:11, 15; 760:4; 763:22; 765:3, 5, 7, 23, 25; 766:3; 770:21; 771:22; 773:8, 17, 22</p> <p>entirely [1] - 772:19</p> <p>entitled [1] - 754:14</p> <p>entries [2] - 746:25; 747:12</p> <p>establish [3] - 740:24; 743:15; 775:13</p> <p>established [1] - 733:4</p> <p>establishing [1] - 742:21</p> <p>et [2] - 757:16</p> <p>evaluate [1] - 749:19</p> <p>eventually [1] - 774:3</p> <p>Evergreen [3] - 740:14; 747:7; 748:16</p> <p>evidence [38] - 732:3; 733:5; 734:5; 740:9, 16, 19, 22; 741:11, 23; 742:6, 21; 751:16, 21, 24; 752:13; 753:19; 758:7; 759:16; 760:7; 761:17; 762:4; 763:6; 765:12, 21; 769:22; 770:4; 771:4, 7, 23; 773:1; 774:12; 775:7, 9, 12, 18</p> <p>evident [1] - 766:17</p> <p>evidentiary [2] - 744:2; 750:5</p> <p>exactly [1] - 758:16</p> <p>examination [1] - 769:20</p> <p>examine [2] - 773:4, 20</p>
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examining [1] - 766:1 except [3] - 740:15; 758:10; 763:7 exception [3] - 735:3; 738:19; 739:4 exclude [1] - 750:8 excluded [2] - 729:23; 765:12 exclusion [1] - 753:19 exhibit [6] - 734:24; 735:11, 19; 754:6; 756:18; 765:18 Exhibit [11] - 735:6; 745:16; 746:24; 747:13; 748:13, 15; 753:25; 758:8; 762:7, 10, 14 Exhibits [4] - 729:13; 732:22; 736:2; 745:11 exhibits [1] - 734:23 expected [2] - 743:3; 750:20 expensive [1] - 751:17 explain [5] - 731:22; 738:3; 742:5; 751:12; 764:11 explained [1] - 731:3 explaining [1] - 752:16 explanation [2] - 740:4; 750:4 explicit [1] - 765:14 explicitly [2] - 754:21; 767:11 extent [2] - 741:13; 764:18 extraordinarily [1] - 768:3	flowing [1] - 758:23 follow [2] - 730:2, 5 followed [2] - 758:11; 762:24 follows [2] - 733:17; 757:11 footnote [1] - 751:15 Footnote [1] - 752:17 force [2] - 770:24 foreign [1] - 735:2 former [1] - 748:2 formulated [1] - 737:11 forth [1] - 754:19 forty [1] - 758:19 forty-five [1] - 758:19 foundation [10] - 738:22; 743:5; 744:2, 6; 756:20; 757:24; 765:2, 4, 9; 770:21 Francisco [1] - 746:9 frankly [3] - 742:14; 748:6; 775:25 free [2] - 746:13; 754:14 full [2] - 772:9; 774:25 fundamental [1] - 749:22 funds [6] - 739:19; 743:22; 751:5; 766:18, 20; 767:1 furtherance [2] - 739:7; 774:5	H	I	invoice [21] - 732:15, 20-21; 735:4, 6, 17, 22; 736:14, 22, 24; 737:6, 10, 15; 743:6; 755:5; 757:15, 23; 762:11; 763:17; 764:15 invoices [18] - 731:4; 733:13-15, 22, 25; 737:5, 7, 20, 22; 748:22; 755:9; 757:17, 24; 758:3; 762:13 involve [3] - 739:11; 772:20; 773:12 involved [9] - 736:22; 743:15; 744:8, 10, 12, 19; 758:8; 761:20; 769:10 involves [1] - 774:5 involving [2] - 736:20; 763:9 IRS [2] - 757:3, 8 issue [1] - 765:17 issues [4] - 773:5, 21 itself [2] - 743:25; 750:7
F	G			J
face [4] - 732:17; 741:1, 5; 769:1 fact [3] - 755:12; 757:23; 758:11 falls [1] - 735:1 false [4] - 731:4; 732:17; 733:13; 737:6 family [2] - 759:14, 16 far [4] - 742:3; 744:21; 774:1; 775:1 father [4] - 744:23; 745:7, 22; 755:5 FBI [1] - 757:3 fear [1] - 777:10 Fernando [5] - 739:2; 745:8; 753:15 few [2] - 737:1; 767:25 figure [1] - 730:7 financial [1] - 760:7 Financial [4] - 732:10; 758:19; 759:10; 760:14 fine [3] - 748:3; 771:17; 778:11 finished [1] - 729:13 First [3] - 734:21; 761:4, 11 first [10] - 747:17; 754:13; 758:18, 20; 762:21; 764:24; 766:13; 768:2, 12 five [3] - 758:19; 769:5; 778:15 five-minute [1] - 778:15 flatly [1] - 742:3	general [6] - 737:11; 738:12; 755:23; 767:21; 771:8, 10 generated [1] - 747:13 Germany [1] - 771:14 gist [1] - 777:24 given [6] - 741:18; 746:2, 7; 763:10; 767:5; 776:20 glad [1] - 742:5 glance [1] - 764:17 Global [4] - 732:10; 758:19; 759:10; 760:14 GOLDBERG [2] - 778:16, 19 government [19] - 731:7; 732:16; 742:16; 744:15, 20; 747:4, 21; 749:18; 751:15; 752:9; 754:4, 7; 755:10; 759:6, 8; 760:7; 762:4; 774:24; 777:11 government's [5] - 729:15; 749:24; 761:18, 22; 771:5 Government's [7] - 732:22; 735:6; 736:2; 745:11, 16; 748:15; 762:14 grant [1] - 756:10 grease [1] - 764:2 group [1] - 737:9 Grupo [19] - 732:7, 9; 733:9, 15; 735:24; 736:8, 25; 758:12, 24-25; 759:2; 760:9; 766:18; 775:13; 776:8 guess [1] - 767:16 guessing [1] - 777:16 guidance [1] - 750:2 Gustavo [1] - 746:8	hair [8] - 751:7, 14, 24-25; 752:1, 5, 14, 19 hall [1] - 778:6 hand [3] - 731:1; 738:2; 763:2 handed [2] - 729:12; 768:17 handsomest [1] - 753:6 Handzlik [4] - 766:13; 767:22; 773:24; 774:11 HANDZLIK [18] - 761:2; 766:14; 767:10, 23; 770:11, 16; 773:25; 774:9, 15, 18; 775:4, 21; 776:11, 14, 16; 778:9, 12 Handzlik's [1] - 769:24 happy [2] - 741:9; 752:10 hard [1] - 750:25 hatched [2] - 747:19; 749:13 hear [1] - 729:15 heard [4] - 750:24; 756:17; 764:25; 766:22 hearsay [6] - 731:11; 738:6, 18; 751:5; 757:25; 765:9 held [1] - 751:21 help [1] - 754:12 helped [3] - 737:5; 754:8; 772:7 Hernandez [13] - 731:17; 744:18; 746:8; 751:4; 759:7, 14, 24; 760:2; 761:16, 18, 23; 762:4; 764:3 Hernandez's [4] - 760:2, 5 highlighting [1] - 771:3 Holguin [1] - 746:9 honestly [2] - 742:4; 751:23 Honor [137] - 729:19, 25; 730:11, 15, 24; 731:10, 14, 19, 21; 732:6, 23; 733:1, 7, 10, 16, 18; 734:8, 12, 15, 23; 735:12, 14, 16, 18, 25; 736:15; 737:1, 9, 17; 738:8, 15, 19; 739:5, 8, 13, 16; 740:17, 20, 23; 741:9, 16; 742:11; 743:1, 6, 12; 744:4, 8, 11, 13; 745:5, 14; 746:9, 12, 18; 747:1, 3, 16, 24; 748:5, 10, 15; 749:5; 750:16; 751:8; 752:4, 9, 13, 24; 753:3, 11, 21; 754:2, 4, 17; 755:8, 16; 756:1, 4, 6, 14, 19; 758:5, 16; 759:1, 20, 23; 760:21; 761:2, 4, 9-10, 13, 22; 762:8, 18; 763:10, 12, 16, 23; 764:5, 9, 13, 22; 765:15; 766:7, 15, 24; 767:23, 25; 768:4, 16, 18, 22; 769:6, 23; 770:1, 4, 8, 11, 17; 771:5; 772:2, 12; 773:25; 774:10, 15; 775:4, 21, 24; 776:3, 16, 20; 777:3; 778:5, 8, 16 Honor's [1] - 763:10 hour [2] - 776:18 hours [3] - 777:21	identical [3] - 733:15; 758:14 identified [4] - 730:9; 731:2; 738:16; 756:5 illegal [1] - 739:24 immediate [1] - 750:7 imply [1] - 741:17 importance [1] - 771:21 important [1] - 759:6 impossible [1] - 741:17 inadmissible [3] - 740:3; 742:3; 766:11 including [2] - 729:13; 731:7 incoming [1] - 736:3 incommensurate [1] - 751:20 incorrect [1] - 766:24 indicted [1] - 755:15 indictment [1] - 761:11 Indictment [8] - 734:21; 738:21; 747:20; 755:10; 759:4; 761:5, 11; 771:8 indirect [1] - 743:25 individual [2] - 729:7; 730:19 inference [2] - 760:17, 22 information [11] - 730:22; 734:25; 737:10; 750:18; 752:25; 754:7, 18; 768:11; 769:15, 17; 777:13 inmates [1] - 739:12 instead [1] - 749:2 instruct [6] - 772:1, 3; 773:5; 777:1, 11; 778:17 instructed [3] - 729:9; 772:21; 773:13 instructing [1] - 777:17 instruction [15] - 764:19; 767:4, 8; 769:25; 770:5, 13, 18; 771:6, 16-18; 772:5; 774:2, 17; 777:24 instructions [2] - 775:17 intend [3] - 775:7; 776:11 intends [1] - 737:20 intent [1] - 775:10 interacted [1] - 757:22 interaction [1] - 765:7 interactions [2] - 730:18; 757:13 International [14] - 731:5, 23, 25; 732:4, 8; 737:15; 738:3; 755:9, 11; 756:8; 759:11; 772:10; 773:1, 8 International's [2] - 732:10; 761:15 interview [6] - 756:23-25; 757:2, 4, 21 intrinsically [1] - 731:12 introduce [5] - 737:20; 741:10; 751:15, 24; 765:13 introducing [1] - 752:12 investigation [1] - 748:6 invite [1] - 740:11 inviting [1] - 740:1	John's [2] - 734:10, 24 join [1] - 769:24 joking [1] - 751:9 Jorge [1] - 744:18 July [1] - 756:24 jump [1] - 776:23 juror [1] - 730:5 jurors [2] - 729:9; 778:4 jury [8] - 741:6; 760:17; 764:19; 767:5; 770:23; 771:7; 772:3; 774:4
				K
				Keith [1] - 746:16 kidding [1] - 751:23 killing [1] - 739:11 kind [1] - 775:8 knowing [1] - 769:16 knowledge [7] - 747:22; 751:4, 22; 752:17; 753:8; 754:10 known [1] - 772:20 knows [1] - 769:1 kosher [2] - 741:6; 742:10
				L
				L.A [1] - 769:10 labeled [1] - 748:19 lacking [1] - 740:4 lacks [2] - 744:1 laden [1] - 742:23 laid [2] - 738:22; 759:4 language [1] - 777:12 Larson [2] - 756:17; 764:20 LARSON [13] - 756:19; 757:1, 3, 6, 8, 11; 758:2; 764:22; 765:1, 9; 766:7; 770:17; 771:2 Larson's [1] - 758:6 last [5] - 735:11, 18; 756:19;

<p>759:18; 765:4 late [1] - 730:18 latest [2] - 747:17 laundered [2] - 743:22; 775:14 laundering [5] - 739:21; 753:10; 759:5; 760:17 law [2] - 729:9; 742:11 lawyer [2] - 768:20; 769:8 lawyers [5] - 729:6; 750:25; 768:8; 773:3, 19 least [6] - 730:6; 741:3; 747:13; 755:9; 760:18; 761:24 lectern [1] - 729:17 Lee [4] - 746:17; 767:13; 768:3; 769:14 lend [1] - 776:22 letters [2] - 768:6, 10 level [1] - 750:4 Levine [5] - 735:13; 767:11, 24; 769:4; 776:19 LEVINE [14] - 735:14; 767:25; 768:10, 16, 18, 22; 769:6, 13, 23; 770:1; 776:20; 777:3; 778:5, 8 likely [1] - 750:5 likewise [2] - 759:13 limit [2] - 741:10; 749:24 limitations [1] - 765:14 limited [5] - 750:18; 767:4, 12; 773:8, 22 limiting [13] - 767:8; 769:25; 770:5, 12, 18; 771:6, 16-18; 772:4; 774:2; 775:17; 777:12 Lindsey [29] - 732:5, 7; 733:6, 8; 735:22; 736:3; 746:16; 758:12; 760:12, 18, 25; 761:20; 766:21; 767:7, 13-14, 17; 769:10; 770:13; 771:18, 20; 772:7; 774:6, 21; 776:3, 7 line [1] - 743:16 link [13] - 731:20; 733:12; 746:22; 747:5; 753:18; 756:10; 758:10; 759:3; 760:12; 765:24; 774:8; 776:7 linked [4] - 732:5; 733:9; 735:22; 756:12 linking [1] - 756:14 list [1] - 734:24 LMC [2] - 733:12; 763:7 logic [1] - 739:6 long-sustaining [1] - 777:9 look [4] - 741:2; 742:10; 745:15; 748:14 looked [3] - 741:5, 20; 742:22 looking [2] - 735:20; 766:23 LOS [1] - 729:1 lost [1] - 745:4 LTD [1] - 735:12</p>	<p>mail [3] - 768:18; 769:4 man [4] - 731:1; 738:2; 753:6; 763:2 managed [1] - 742:24 Management [4] - 737:25; 745:20; 755:6; 764:15 management [2] - 733:25; 745:11 manager [3] - 737:11; 738:12; 755:24 manner [1] - 737:14 Manufacturing [11] - 732:7; 736:3; 760:13, 25; 766:21; 767:14; 769:11; 771:18, 20; 772:8; 774:6 marked [1] - 746:24 Martimas [1] - 731:5 massive [1] - 750:4 material [1] - 768:23 materials [1] - 729:12 mathematically [1] - 760:19 matter [1] - 772:23 matters [1] - 729:11 Maya [1] - 745:8 mean [6] - 742:18; 751:7, 10; 753:7; 767:17; 775:25 meaning [2] - 736:19; 771:10 means [2] - 736:17; 751:20 members [4] - 739:9; 759:14, 16 memorandum [1] - 757:4 merit [1] - 740:5 met [2] - 730:17; 766:3 Mexican [4] - 734:7; 739:11; 742:11 Mexico [5] - 748:5, 12; 749:12; 751:25; 765:18 military [1] - 734:9 Military [2] - 734:10, 24 MILLER [1] - 772:12 million [2] - 748:19; 760:1 mind [1] - 742:4 minimize [1] - 751:10 minute [2] - 764:24; 778:15 minutes [1] - 778:5 missed [1] - 759:18 moment [3] - 729:8; 770:9; 772:12 money [25] - 731:6; 732:9, 13; 733:4, 8; 734:6; 739:21-23; 746:7; 748:19; 753:10; 757:19; 758:18, 23; 759:5; 760:9, 14, 24; 764:2; 767:17; 775:13; 776:3 monies [1] - 776:7 Moreno [27] - 730:10, 14, 17, 23; 731:7, 17; 732:1; 733:19; 738:2, 5, 12; 740:16; 746:3; 748:20; 751:16, 19; 752:18; 757:18; 762:20, 22, 25; 763:1, 4, 7, 22; 764:3 Moreno's [8] - 731:1; 734:9; 751:12; 752:14; 753:4; 755:2; 763:2, 8 morning [2] - 729:4, 12</p>	<p>most [2] - 763:4; 775:8 mother [5] - 759:24; 760:2, 5; 761:15; 766:19 motion [1] - 766:22 moved [1] - 749:23 MR [34] - 756:19; 757:1, 3, 6, 8, 11; 758:2; 761:2; 764:22; 765:1, 9; 766:7, 14; 767:10, 23; 770:11, 16-17; 771:2; 772:12; 773:25; 774:9, 15, 18; 775:4, 21, 24; 776:11, 14, 16; 778:9, 12, 16, 19 Mrazek [14] - 729:17; 747:22; 749:15; 751:12; 756:22; 765:5; 766:17, 25; 768:5, 19; 769:2, 8; 774:1; 777:8 MRAZEK [137] - 729:19, 25; 730:11, 15, 17, 24; 731:10, 14, 19, 21, 25; 732:6, 20, 23; 733:1, 7, 10, 16, 18, 21; 734:3, 8, 12, 15, 20, 23; 735:6, 11, 18, 25; 736:7, 9, 11, 15; 737:1, 4, 9, 17, 24; 738:7, 10, 15, 19; 739:5, 8, 13, 16, 18; 740:17, 20, 23; 741:9, 16; 742:11; 743:1, 6, 12; 744:4, 8, 11, 13, 18; 745:5, 7, 10, 14, 16, 18; 746:3, 6, 12, 18; 747:1, 3, 16, 24; 748:1, 5, 10, 15, 24; 749:5; 750:16; 751:8; 752:4, 9, 12, 24; 753:3, 11, 21, 23, 25; 754:2, 4, 17; 755:1, 8, 16, 19, 23; 756:1, 4, 6, 8, 14; 758:5, 16; 759:1, 20, 23; 760:10, 13, 21, 24; 761:3, 7, 9, 22; 762:8, 10, 13, 18; 763:10, 16, 21; 764:5, 9, 13; 765:15; 766:8; 770:4, 8; 771:5, 12; 772:2, 10 Mrazek's [1] - 776:22 MS [151] - 729:19, 25; 730:11, 15, 17, 24; 731:10, 14, 19, 21, 25; 732:6, 20, 23; 733:1, 7, 10, 16, 18, 21; 734:3, 8, 12, 15, 20, 23; 735:6, 11, 14, 18, 25; 736:7, 9, 11, 15; 737:1, 4, 9, 17, 24; 738:7, 10, 15, 19; 739:5, 8, 13, 16, 18; 740:17, 20, 23; 741:9, 16; 742:11; 743:1, 6, 12; 744:4, 8, 11, 13, 18; 745:5, 7, 10, 14, 16, 18; 746:3, 6, 12, 18; 747:1, 3, 16, 24; 748:1, 5, 10, 15, 24; 749:5; 750:16; 751:8; 752:4, 9, 12, 24; 753:3, 11, 21, 23, 25; 754:2, 4, 17; 755:1, 8, 16, 19, 23; 756:1, 4, 6, 8, 14; 758:5, 16; 759:1, 20, 23; 760:10, 13, 21, 24; 761:3, 7, 9, 22; 762:8, 10, 13, 18; 763:10, 16, 21; 764:5, 9, 13; 765:15; 766:8; 767:25; 768:10, 16, 18, 22; 769:6, 13, 23; 770:1, 4, 8; 771:5, 12; 772:2, 10; 776:20; 777:3; 778:5, 8 multiple [3] - 731:6; 736:1; 764:14 must [1] - 747:12 muster [1] - 742:6</p>	<p>N name [8] - 734:4; 740:8; 743:16; 744:18; 750:24; 753:15; 772:9 narrative [1] - 777:14 nature [1] - 776:21 near [1] - 733:9 nearly [1] - 747:5 necessarily [1] - 742:10 necessary [2] - 729:16; 753:9 need [4] - 740:11; 768:14; 775:2; 778:3 needing [1] - 740:1 needs [2] - 747:4; 749:6 Nester [24] - 731:7; 732:1; 733:19; 734:9; 738:2-4, 12; 740:16; 746:3; 748:20; 751:12, 16, 19; 752:14, 18; 753:4; 762:20, 22, 24-25; 763:2, 4, 22 Nestor [1] - 755:2 network [1] - 733:24 Network [4] - 737:24; 745:19; 755:6; 764:15 never [2] - 766:3 Nineties [1] - 730:18 none [1] - 776:4 nothing [10] - 737:8; 740:14; 741:1; 742:5, 22; 757:20; 767:6; 768:3; 769:1; 770:20 notwithstanding [1] - 774:2 Nova [1] - 746:7 number [7] - 732:24; 733:3; 735:5, 10, 12, 17; 746:24 numbers [1] - 761:8</p>	<p>official [6] - 734:7; 744:15, 17, 19-20; 748:2 officials [7] - 731:7; 733:19; 739:20; 742:12; 757:19; 771:21; 775:15 once [2] - 743:18; 750:22 one [22] - 732:21; 733:22; 737:4, 19, 22; 738:4; 739:24; 745:11; 747:5; 748:14; 749:1; 758:16, 19; 759:3; 760:5; 761:13; 762:13; 775:24 one-time [1] - 749:1 one-to-one [1] - 747:5 ones [2] - 733:23; 761:6 open [1] - 742:3 Operations [2] - 761:25; 762:1 operations [1] - 762:1 operator [2] - 755:3; 763:2 opportunity [3] - 742:19; 767:19; 778:10 opposed [1] - 741:25 order [2] - 742:13; 752:15 ordered [1] - 758:3 outcome [2] - 777:25; 778:2 overall [1] - 740:6 overbearing [1] - 776:24 overseas [1] - 732:12 overstating [1] - 774:11 Overt [4] - 761:11, 16; 774:4, 13 overt [7] - 734:20; 761:4, 12-13; 771:7; 774:4; 775:2 own [2] - 745:2; 765:6 owned [1] - 743:20 owner [4] - 737:18; 743:4, 24; 755:11 ownership [1] - 743:19</p>
<p>M Mafia [1] - 739:11</p>			<p>O O'Shea [3] - 755:25; 763:23, 25 object [1] - 776:25 objecting [2] - 777:4 objection [2] - 740:2; 777:4 objections [2] - 729:14; 750:5 Obras [1] - 731:5 obtain [1] - 749:1 obtained [4] - 741:19; 747:13 obvious [2] - 751:13, 17 obviously [1] - 764:14 occur [1] - 732:7 occurred [6] - 734:16; 747:9; 748:25; 752:5; 759:7 October [1] - 769:13 odious [1] - 775:8 offer [5] - 729:18; 730:4; 740:21; 761:18; 772:4 offered [1] - 771:25 offering [2] - 769:14, 16 office [3] - 755:2; 757:13; 763:18</p>	

pay [8] - 732:4; 734:9; 752:19; 754:12; 756:16; 763:19; 764:2, 14
paying [1] - 735:15
payment [4] - 733:25; 749:1; 755:6; 759:2
payments [23] - 733:11; 738:5; 744:9, 24; 745:23, 25; 746:1; 747:5, 8; 748:16, 25; 749:2; 752:2, 13; 758:12, 24; 760:18; 761:19; 763:3; 765:17; 775:14
people [4] - 750:13; 764:14; 765:17; 775:10
perceive [1] - 740:15
percent [7] - 760:14, 18; 766:10, 20; 767:17, 20; 777:15
percipient [1] - 750:19
perfectly [1] - 754:13
perhaps [2] - 731:16; 749:9
period [2] - 748:25; 762:19
periods [1] - 749:17
permissible [1] - 777:17
permission [1] - 754:11
permit [4] - 740:9; 750:4; 753:14; 760:22
permitted [8] - 740:5; 762:5; 765:13, 22; 773:3, 16, 19; 774:3
permitting [2] - 767:2
person [3] - 731:2; 763:3; 764:8
personal [1] - 754:10
phase [3] - 774:23; 778:3
phony [2] - 737:15; 742:22
physical [2] - 740:20; 751:13
picked [1] - 755:3
picture [1] - 730:12
place [2] - 756:24; 776:22
plaguing [1] - 742:16
plain [1] - 777:12
plan [1] - 748:24
planned [1] - 747:9
planning [4] - 734:22; 740:21; 752:12; 763:5
plastic [3] - 751:6, 14; 752:5
played [4] - 773:2, 9, 18, 23
pleading [1] - 776:1
plugs [7] - 751:7, 24-25; 752:2, 5, 14, 20
plugs.. [1] - 751:14
point [7] - 740:9; 756:19; 760:20; 765:1; 766:2, 16; 767:15
pointed [1] - 757:11
points [1] - 768:1
pop [1] - 766:14
position [5] - 742:22; 751:20; 762:22, 25; 770:20
possible [1] - 729:21
possibly [1] - 730:5
precisely [1] - 772:16
preclude [4] - 774:7, 12, 19; 775:1

precluded [1] - 775:23
precluding [1] - 775:16
prejudice [1] - 750:5
prejudicial [2] - 768:3; 777:14
preliminarily [1] - 729:22
preparation [1] - 758:8
prepare [2] - 754:9; 768:5
prepared [4] - 729:18; 766:3; 767:16; 777:15
preposterous [1] - 740:11
present [2] - 729:7; 740:13
presented [3] - 735:9; 737:23
presenting [2] - 733:24; 743:14
pressures [1] - 742:20
previous [1] - 733:3
prison [1] - 739:11
probative [5] - 736:17; 751:21; 755:12; 756:13; 771:7
problem [3] - 743:18; 768:25; 771:3
proceed [2] - 750:17; 755:22
proceedings [2] - 733:4; 772:11
proceeds [2] - 733:19; 739:24
produced [2] - 768:23
product [1] - 741:22
products [2] - 741:21
proffer [5] - 729:15; 740:2; 763:5; 766:11; 770:19
proffering [1] - 768:11
proffers [1] - 768:8
proof [7] - 729:18; 730:4; 739:25; 749:24; 752:11; 759:8; 761:22
proposal [1] - 761:19
prosecution [4] - 772:21; 773:13; 776:2; 777:2
prosecutor [1] - 747:15
prove [18] - 734:22; 741:14; 743:19, 24; 749:3; 750:11; 752:3, 7, 17, 22, 24; 753:1, 9; 759:6; 771:25; 774:13; 775:1
proven [1] - 771:24
proves [5] - 747:2; 755:7; 772:1, 3
provide [1] - 733:25
province [1] - 776:1
proving [3] - 739:23; 743:25; 749:11
public [1] - 734:7
purchase [1] - 761:12
purchased [2] - 752:20; 759:7
purportedly [1] - 737:11
purports [1] - 732:20
purpose [3] - 747:6; 767:6; 771:3
put [4] - 741:23; 742:1; 751:18; 760:7

putting [1] - 759:8
puzzled [1] - 750:1

Q

quarter [1] - 760:1
questioning [2] - 776:21
questions [6] - 729:21; 730:8; 740:7; 746:13, 18
quite [4] - 742:17; 750:25; 751:1; 775:25

R

raised [1] - 729:11
rate [1] - 751:25
reader [1] - 741:2
reading [2] - 729:13; 756:23
real [3] - 742:9; 749:11; 771:3
really [4] - 740:25; 748:7; 755:13; 767:15
reasons [1] - 766:11
rebut [3] - 741:23; 747:3; 749:5
receive [1] - 738:5
received [9] - 743:6; 745:1, 10, 19; 747:6, 11; 754:23
receiving [1] - 751:5
recipient [1] - 752:18
record [9] - 735:3; 769:3; 770:12; 775:5, 22; 776:12, 15; 778:20
records [1] - 735:2
references [1] - 732:15
referring [2] - 745:6; 769:4
reflect [1] - 769:3
reflected [1] - 749:13
regard [1] - 731:22
regarding [1] - 775:7
regardless [1] - 740:5
regularly [1] - 735:2
relate [1] - 774:20
relationship [1] - 777:10
relayed [1] - 761:4
relevance [2] - 756:13; 770:14
relevant [10] - 736:17; 739:18; 749:3, 5; 771:23; 773:7, 21; 774:12; 775:15
remains [1] - 774:14
remote [3] - 742:2; 749:10; 770:22
repeat [1] - 773:9
report [2] - 756:23; 757:2
reports [1] - 757:20
representation [1] - 771:13
representative [1] - 742:8
representing [3] - 754:15; 764:7; 769:8
request [3] - 767:14; 769:24; 770:3

requested [1] - 769:16
requesting [3] - 767:9; 770:12
reserved [1] - 749:24
respect [5] - 736:23; 753:25; 761:14; 774:4
respects [1] - 732:19
response [2] - 742:21; 770:2
responsible [1] - 747:14
rested [1] - 774:24
result [1] - 765:11
revert [1] - 776:2
reviewed [1] - 757:15
Ricardo [1] - 746:8
rich [1] - 753:5
right-hand [3] - 731:1; 738:2; 763:2
rights [1] - 778:1
role [4] - 772:19, 22; 773:1, 17
roles [2] - 773:8, 22
roughly [1] - 760:14
Rovira [36] - 731:2, 9; 738:2, 11, 17; 739:1; 740:8; 746:3, 7; 747:22; 748:1, 20; 750:22; 751:3; 753:18; 754:8, 19; 755:2; 757:11, 17-18, 24; 762:8, 17, 19, 24; 763:6, 18, 22; 764:3, 18; 765:19
Rovira's [4] - 748:11; 755:2; 762:21; 763:18
Rule [2] - 742:13; 776:9
ruled [1] - 777:5
rules [2] - 742:21; 769:22
ruling [8] - 738:24; 740:3; 749:25; 763:11, 14; 764:23; 766:10
rulings [2] - 753:22; 778:1
run [1] - 778:6
running [1] - 746:20

S

SA [2] - 772:10; 773:1
salary [1] - 752:23
sales [2] - 771:13
Salvador [1] - 746:8
saver [1] - 777:20
saw [2] - 754:9; 757:22
SBB [1] - 771:19
scheduled [1] - 755:19
scheme [1] - 765:24
school [1] - 734:18
scribbled [1] - 772:17
searching [1] - 733:2
seated [2] - 729:5; 735:13
SEC [1] - 735:12
second [3] - 745:22; 761:13; 768:25
securing [1] - 750:10
see [7] - 741:24; 742:4; 743:13; 746:23; 769:20; 774:8

seek [5] - 752:24; 754:5, 10; 763:11; 775:9
seem [1] - 738:24
sense [2] - 736:21; 749:22
sent [5] - 732:12; 733:5, 15; 768:6; 769:13
series [2] - 747:9; 749:2
servant [1] - 752:1
service [2] - 751:20; 752:22
session [1] - 764:17
set [1] - 735:8
several [1] - 735:9
several-page [1] - 735:9
show [6] - 736:17; 748:13; 760:8; 761:23; 767:16, 19
showing [1] - 735:23
shows [3] - 756:9; 775:18
shuttled [1] - 754:19
side [1] - 775:3
sides [1] - 777:25
sign [1] - 757:22
signatory [1] - 734:4
signature [4] - 737:19; 743:16; 755:4; 759:12
signed [6] - 743:8, 16; 756:21; 758:9; 762:15; 765:3
signify [1] - 741:2
signing [1] - 765:23
signs [2] - 732:11; 755:9
silent [1] - 742:17
similar [2] - 733:16; 740:15
similarity [2] - 736:21, 24
simple [1] - 750:3
simply [2] - 749:1; 772:4
SITRACEN [1] - 740:14
sitting [1] - 764:16
skids [1] - 764:3
sole [1] - 772:24
solely [1] - 773:17
sometime [1] - 751:1
son [1] - 745:7
son's [1] - 734:9
sorry [6] - 735:14; 745:5; 757:1; 761:2, 13; 774:15
sort [1] - 777:6
Sorvill [70] - 731:5, 23, 25; 732:4, 15-16; 733:6, 11, 14-15, 22; 734:4; 736:5, 22, 24; 737:5, 8, 15, 18-19, 22; 738:3; 743:4, 7, 21; 744:12; 745:23, 25; 746:25; 748:22; 755:9, 11; 756:8, 10, 12; 757:16; 758:10, 13, 20, 24; 759:2, 8, 11, 16; 760:10; 761:12, 14; 763:17; 771:9, 12, 15, 22; 772:9; 773:1, 8, 17, 22; 774:8-10; 775:8, 13; 776:4, 8
Sorvill's [1] - 732:12
Sosa [1] - 746:8
sounds [1] - 731:11
source [1] - 753:8
sources [1] - 739:20
specifically [1] - 762:3
spreadsheet [2] - 745:10, 19

St [2] - 734:10, 24 stamped [1] - 769:5 stand [1] - 749:25 standing [1] - 735:15 started [1] - 764:10 starting [4] - 730:4; 768:6, 11 statement [7] - 738:7, 10, 22-23, 25; 739:6; 769:7 States [7] - 732:18; 737:20; 739:21; 741:22; 748:7; 752:6, 21 States' [1] - 739:25 step [1] - 772:12 Steve [1] - 746:17 still [3] - 754:4; 763:13; 771:6 stood [1] - 764:21 stop [1] - 765:19 story [2] - 740:6; 741:13 straight [2] - 736:25; 758:15 strict [1] - 749:6 struggle [1] - 777:22 subject [1] - 748:6 substantive [1] - 739:22 sudden [1] - 749:25 suggesting [1] - 772:4 suggests [2] - 757:21; 777:7 summary [1] - 744:23 superior [1] - 741:21 Superseding [3] - 734:21; 761:5, 11 superseding [1] - 761:10 support [1] - 736:2 suppose [1] - 753:5 supposed [1] - 748:20 surgery [3] - 751:6, 14; 752:5 surprised [1] - 745:22 suspicion [1] - 752:2 sustained [1] - 750:6 sustaining [1] - 777:9 Swiss [1] - 761:15 Switzerland [1] - 771:14 sworn [1] - 730:22	771:19; 772:7; 773:16 testimony [22] - 730:13, 22; 731:22; 736:18; 744:1, 21; 753:14; 762:6, 21, 24; 764:18; 767:12; 768:2; 772:22, 24; 773:4, 6-7, 14, 20-21; 774:19 THE [177] - 729:4, 20; 730:1, 12, 16, 21; 731:8, 11, 15, 20, 24; 732:3, 19, 21, 24; 733:2, 8, 11, 17, 20; 734:2, 5, 11, 13, 17, 22; 735:4, 8, 13, 17, 20; 736:5, 8, 10, 13, 16; 737:3, 7, 13, 22; 738:6, 9, 13, 16, 24; 739:6, 9, 14, 17; 740:1, 19, 21, 24; 741:12, 24; 742:15; 743:2, 11, 13; 744:5, 10, 12, 17; 745:4, 6, 9, 12, 15, 17; 746:1, 5, 10, 14, 20; 747:2, 12, 17, 25; 748:3, 9, 13, 23; 749:3, 9; 750:17; 751:9; 752:7, 11, 15; 753:1, 5, 12, 22, 24; 754:1, 3, 13, 24; 755:7, 13, 17, 21, 25; 756:2, 5, 7, 9, 17, 25; 757:2, 5, 7, 10; 758:1, 6, 21; 759:18, 21; 760:9, 12, 16, 22; 761:6, 8, 17; 762:5, 9, 12, 16; 763:5, 14, 20, 24; 764:6, 10, 16, 24; 765:8, 10, 16; 766:9; 767:8, 19, 24; 768:9, 13, 17, 19; 769:3, 7, 19, 24; 770:2, 7, 10, 15, 25; 771:10, 24; 772:9, 14; 774:7, 11, 16, 22; 775:12, 22; 776:6, 13, 15, 17; 777:1, 11; 778:7, 11, 14, 18 theory [1] - 736:16 thereafter [1] - 760:4 therefore [1] - 752:1 they've [1] - 777:9 throughout [3] - 742:16; 762:2, 25 throw [1] - 776:8 THURSDAY [1] - 729:1 timely [1] - 776:9 today [1] - 737:20 together [1] - 756:15 took [5] - 755:5; 756:24; 758:22; 764:1, 8 Torres [1] - 746:8 totally [2] - 740:4; 745:4 trade [1] - 733:14 transaction [2] - 734:17; 737:15 transcript [1] - 764:17 transfer [12] - 732:11, 14, 16; 733:23; 734:9; 735:23; 758:17, 19-20; 759:25; 761:12 transferred [2] - 732:9; 734:6 transfers [16] - 732:7; 736:1; 758:17; 759:7, 10, 14-15, 21, 25; 760:5, 9, 19; 761:1, 14; 766:19 transformation [1] - 751:13 trial [4] - 755:18, 20, 22; 763:25 tried [1] - 750:2 triggering [1] - 752:2 true [4] - 741:3; 750:8;	762:10 truth [1] - 752:21 try [5] - 730:6; 734:22; 742:5; 771:25; 775:12 trying [7] - 739:15; 741:10; 743:18; 764:11, 16; 769:21; 775:1 two [23] - 731:5; 732:8; 735:25; 739:19; 740:18; 742:25; 744:8; 747:7; 756:15; 758:11, 13, 17-18; 759:10, 13, 15, 21, 25; 760:4, 10; 762:13; 778:5 type [1] - 776:2	754:24; 755:17; 756:11, 20; 757:5-7, 21; 762:6, 16; 764:7, 12; 765:2, 6; 766:1; 767:12; 769:1, 8; 772:18; 774:20; 776:22; 777:2, 8-9; 778:17 witnesses [1] - 742:1 words [1] - 772:16 world [1] - 749:11 worry [1] - 776:21 writing [1] - 730:6 wrote [1] - 757:15
		U	Y
		U.S [1] - 742:12 uncle [1] - 753:5 under [6] - 735:1; 738:25; 741:18; 742:11; 750:7 understood [1] - 743:9 unindicted [2] - 731:17; 756:3 United [8] - 732:17; 737:20; 739:21, 25; 741:22; 748:7; 752:6, 21 unpersuasive [1] - 740:4 unusual [1] - 742:22 up [10] - 730:2; 745:12; 753:18; 755:3; 764:16; 765:24; 766:14; 769:17; 774:8; 776:23 uphold [1] - 778:1 utterly [2] - 742:25; 746:22	yacht [3] - 759:6, 9; 761:12 year [1] - 749:14 years [2] - 739:1; 751:17 yesterday [12] - 730:2; 731:2; 740:18; 750:2, 24; 761:25; 762:17, 24; 773:12; 776:21; 777:13 yesterday's [3] - 764:17; 773:4, 20
		V	Z
		valid [1] - 750:6 value [1] - 756:13 various [1] - 762:25 vehicle [1] - 743:21 vessel [1] - 743:22 views [1] - 742:17 visited [1] - 757:12 volunteer [1] - 777:13	zero [2] - 776:4; 777:23 zeros [1] - 769:5
		W	
		waiving [1] - 770:13 warrant [1] - 753:19 week [1] - 749:14 weight [1] - 767:16 welcome [1] - 729:4 whatsoever [3] - 733:5; 769:1 whining [1] - 776:1 white [1] - 739:12 wire [12] - 732:6, 11, 14-15; 733:23; 736:3; 759:10, 13, 15, 25; 760:4 wires [1] - 732:8 Wisconsin [2] - 734:10, 18 witness [37] - 729:23; 730:9, 13; 731:15; 736:18; 740:7; 743:14; 746:19; 747:25; 748:3; 750:23;	
T target [1] - 748:6 team [1] - 742:16 terms [3] - 735:1; 762:3; 765:11 testified [5] - 740:17; 761:25; 762:18; 772:18; 773:11 testify [31] - 731:1; 737:5, 17, 21; 738:1; 742:12; 743:4, 24; 744:14, 22; 745:18, 21, 24; 746:6; 748:18; 750:19, 21; 751:2; 752:4; 753:17; 754:21; 756:11; 757:23; 758:1; 763:1, 19; 765:2; 769:18; 777:15 testifying [4] - 744:7;			